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ABSTRACT

This report explains proposed 1997 amendments to the Individuals with Disabilities Act (IDEA). After the proposed new law is presented, a summary of House action is provided along with a section-by-section analysis of the legislation. A statement from the Committee discusses its intention to review, strengthen, and improve IDEA to better educate children with disabilities and enable them to achieve a quality education by: (1) strengthening the role of parents; (2) ensuring access to the general education curriculum and reforms; (3) focusing on teaching and learning while reducing unnecessary paperwork requirements; (4) assisting educational agencies in addressing the cost of improving special education and related services to children with disabilities; (5) giving increased attention to racial, ethnic, and linguistic diversity to prevent inappropriate identification and mislabeling; (6) ensuring schools are safe and conducive to learning; and (7) encouraging parent and educators to work out their differences by using nonadversarial means. The report also includes a reprint of the original law in order to highlight proposed changes. Additional views from U.S. Representative Major Owens and dissenting views from U.S. Representative Ron Paul are also presented. (CR)

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EC

105th Congress
1st Session

HOUSE OF REPRESENTATIVES

Report
105-95

ED 419 322

INDIVIDUALS WITH DISABILITIES EDUCATION ACT AMENDMENTS OF 1997

REPORT

OF THE

COMMITTEE ON EDUCATION AND THE WORKFORCE HOUSE OF REPRESENTATIVES

ON

H.R. 5

TOGETHER WITH

ADDITIONAL AND DISSENTING VIEWS

[Including cost estimate of the Congressional Budget Office]

MAY 13, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

EC 306407

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105TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

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MAY 13, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. GOODLING, from the Committee on Education and the Workforce, submitted the following

REPORT

together with

ADDTIONAL AND DISSENTING VIEWS

[To accompany H.R. 5]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 5) to amend the Individuals with Disabilities Education Act, to reauthorize and make improvements to that Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Individuals with Disabilities Education Act Amendments of 1997".

TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

Parts A through D of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) are amended to read as follows:

"PART A—GENERAL PROVISIONS

"SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS; PURPOSES.

"(a) SHORT TITLE.—This Act may be cited as the 'Individuals with Disabilities Education Act'.

"(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

"PART A—GENERAL PROVISIONS

"Sec. 601. Short title; table of contents; findings; purposes.
"Sec. 602. Definitions.
"Sec. 603. Office of Special Education Programs.
"Sec. 604. Abrogation of State sovereign immunity.
"Sec. 605. Acquisition of equipment; construction or alteration of facilities.
"Sec. 606. Employment of individuals with disabilities.
"Sec. 607. Requirements for prescribing regulations.

"PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

"Sec. 611. Authorization; allotment; use of funds; authorization of appropriations.
"Sec. 612. State eligibility.
"Sec. 613. Local educational agency eligibility.
"Sec. 614. Evaluations, eligibility determinations, individualized education programs, and educational placements.
"Sec. 615. Procedural safeguards.
"Sec. 616. Withholding and judicial review.
"Sec. 617. Administration.
"Sec. 618. Program information.
"Sec. 619. Preschool grants.

"PART C—INFANTS AND TODDLERS WITH DISABILITIES

"Sec. 631. Findings and policy.
"Sec. 632. Definitions.
"Sec. 633. General authority.
"Sec. 634. Eligibility.
"Sec. 635. Requirements for statewide system.
"Sec. 636. Individualized family service plan.
"Sec. 637. State application and assurances.
"Sec. 638. Uses of funds.
"Sec. 639. Procedural safeguards.
"Sec. 640. Payor of last resort.
"Sec. 641. State interagency coordinating council.
"Sec. 642. Federal administration.
"Sec. 643. Allocation of funds.
"Sec. 644. Federal interagency coordinating council.
"Sec. 645. Authorization of appropriations.

"PART D—NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH DISABILITIES

"SUBPART 1—STATE PROGRAM IMPROVEMENT GRANTS FOR CHILDREN WITH DISABILITIES

"Sec. 651. Findings and purpose.
"Sec. 652. Eligibility and collaborative process.
"Sec. 653. Applications.
"Sec. 654. Use of funds.
"Sec. 655. Minimum State grant amounts.
"Sec. 656. Authorization of appropriations.

"SUBPART 2—COORDINATED RESEARCH, PERSONNEL PREPARATION, TECHNICAL ASSISTANCE, SUPPORT, AND DISSEMINATION OF INFORMATION

"Sec. 661. Administrative provisions.

"CHAPTER 1—IMPROVING EARLY INTERVENTION, EDUCATIONAL, AND TRANSITIONAL SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES THROUGH COORDINATED RESEARCH AND PERSONNEL PREPARATION

"Sec. 671. Findings and purpose.
"Sec. 672. Research and innovation to improve services and results for children with disabilities.
"Sec. 673. Personnel preparation to improve services and results for children with disabilities.
"Sec. 674. Studies and evaluations.

"CHAPTER 2—IMPROVING EARLY INTERVENTION, EDUCATIONAL, AND TRANSITIONAL SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES THROUGH COORDINATED TECHNICAL ASSISTANCE, SUPPORT, AND DISSEMINATION OF INFORMATION

"Sec. 681. Findings and purposes.
"Sec. 682. Parent training and information centers.
"Sec. 683. Community parent resource centers.
"Sec. 684. Technical assistance for parent training and information centers.
"Sec. 685. Coordinated technical assistance and dissemination.
"Sec. 686. Authorization of appropriations.
"Sec. 687. Technology development, demonstration, and utilization, and media services.

"(c) FINDINGS.—The Congress finds the following:

"(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

"(2) Before the date of the enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94–142)—

"(A) the special educational needs of children with disabilities were not being fully met;

"(B) more than one-half of the children with disabilities in the United States did not receive appropriate educational services that would enable such children to have full equality of opportunity;

"(C) 1,000,000 of the children with disabilities in the United States were excluded entirely from the public school system and did not go through the educational process with their peers;

"(D) there were many children with disabilities throughout the United States participating in regular school programs whose disabilities prevented such children from having a successful educational experience because their disabilities were undetected; and

"(E) because of the lack of adequate services within the public school system, families were often forced to find services outside the public school system, often at great distance from their residence and at their own expense.

"(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this Act has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

"(4) However, the implementation of this Act has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.

"(5) Over 20 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—

"(A) having high expectations for such children and ensuring their access in the general curriculum to the maximum extent possible;

"(B) strengthening the role of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;

"(C) coordinating this Act with other local, educational service agency, State, and Federal school improvement efforts in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where they are sent;

"(D) providing appropriate special education and related services and aids and supports in the regular classroom to such children, whenever appropriate;

"(E) supporting high-quality, intensive professional development for all personnel who work with such children in order to ensure that they have the skills and knowledge necessary to enable them—

"(i) to meet developmental goals and, to the maximum extent possible, those challenging expectations that have been established for all children; and

"(ii) to be prepared to lead productive, independent, adult lives, to the maximum extent possible;

"(F) providing incentives for whole-school approaches and pre-referral intervention to reduce the need to label children as disabled in order to address their learning needs; and

"(G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results.

"(6) While States, local educational agencies, and educational service agencies are responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.

"(7)(A) The Federal Government must be responsive to the growing needs of an increasingly more diverse society. A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

"(B) America's racial profile is rapidly changing. Between 1980 and 1990, the rate of increase in the population for white Americans was 6 percent, while the rate of increase for racial and ethnic minorities was much higher: 53 percent for Hispanics, 13.2 percent for African-Americans, and 107.8 percent for Asians.

"(C) By the year 2000, this Nation will have 275,000,000 people, nearly one of every three of whom will be either African-American, Hispanic, Asian-American, or American Indian.

"(D) Taken together as a group, minority children are comprising an ever larger percentage of public school students. Large-city school populations are overwhelmingly minority, for example: for fall 1993, the figure for Miami was 84 percent; Chicago, 89 percent; Philadelphia, 78 percent; Baltimore, 84 percent; Houston, 88 percent; and Los Angeles, 88 percent.

"(E) Recruitment efforts within special education must focus on bringing larger numbers of minorities into the profession in order to provide appropriate practitioner knowledge, role models, and sufficient manpower to address the clearly changing demography of special education.

"(F) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation. In the Nation's 2 largest school districts, limited English students make up almost half of all students initially entering school at the kindergarten level. Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education. The Department of Education has found that services provided to limited English proficient students often do not respond primarily to the pupil's academic needs. These trends pose special challenges for special education in the referral, assessment, and services for our Nation's students from non-English language backgrounds.

"(8)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

"(B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

"(C) Poor African-American children are 2.3 times more likely to be identified by their teacher as having mental retardation than their white counterpart.

"(D) Although African-Americans represent 16 percent of elementary and secondary enrollments, they constitute 21 percent of total enrollments in special education.

"(E) The drop-out rate is 68 percent higher for minorities than for whites.

"(F) More than 50 percent of minority students in large cities drop out of school.

"(9)(A) The opportunity for full participation in awards for grants and contracts; boards of organizations receiving funds under this Act; and peer review panels; and training of professionals in the area of special education by minority individuals, organizations, and historically black colleges and universities is essential if we are to obtain greater success in the education of minority children with disabilities.

"(B) In 1993, of the 915,000 college and university professors, 4.9 percent were African-American and 2.4 percent were Hispanic. Of the 2,940,000 teachers, prekindergarten through high school, 6.8 percent were African-American and 4.1 percent were Hispanic.

"(C) Students from minority groups comprise more than 50 percent of K–12 public school enrollment in seven States yet minority enrollment in teacher training programs is less than 15 percent in all but six States.

"(D) As the number of African-American and Hispanic students in special education increases, the number of minority teachers and related service personnel produced in our colleges and universities continues to decrease.

"(E) Ten years ago, 12 percent of the United States teaching force in public elementary and secondary schools were members of a minority group. Minorities comprised 21 percent of the national population at that time and were clearly underrepresented then among employed teachers. Today, the elementary and secondary teaching force is 13 percent minority, while one-third of the students in public schools are minority children.

"(F) As recently as 1991, historically black colleges and universities enrolled 44 percent of the African-American teacher trainees in the Nation. However, in 1993, historically black colleges and universities received only 4 percent of the discretionary funds for special education and related services personnel training under this Act.

"(G) While African-American students constitute 28 percent of total enrollment in special education, only 11.2 percent of individuals enrolled in preservice training programs for special education are African-American.

"(H) In 1986–87, of the degrees conferred in education at the B.A., M.A., and Ph.D levels, only 6, 8, and 8 percent, respectively, were awarded to African-American or Hispanic students.

"(10) Minorities and underserved persons are socially disadvantaged because of the lack of opportunities in training and educational programs, undergirded by the practices in the private sector that impede their full participation in the mainstream of society.

"(d) PURPOSES.—The purposes of this title are—

"(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living;

"(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

"(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

"(2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

"(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting systemic-change activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

"(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

"SEC. 602. DEFINITIONS.

"Except as otherwise provided, as used in this Act:

"(1) ASSISTIVE TECHNOLOGY DEVICE.—The term 'assistive technology device' means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

"(2) ASSISTIVE TECHNOLOGY SERVICE.—The term 'assistive technology service' means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

"(A) the evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment;

"(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;

"(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

"(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

"(E) training or technical assistance for such child, or, where appropriate, the family of such child; and

"(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.

"(3) CHILD WITH A DISABILITY.—

"(A) IN GENERAL.—The term 'child with a disability' means a child—

"(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

"(ii) who, by reason thereof, needs special education and related services.

"(B) CHILD AGED 3 THROUGH 9.—The term 'child with a disability' for a child aged 3 through 9 may, at the discretion of the State and the local educational agency, include a child—

"(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

“(ii) who, by reason thereof, needs special education and related services.

“(4) Educational service agency.—The term ‘educational service agency’—

“(A) means a regional public multiservice agency—

“(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and

“(ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State; and

“(B) includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.

“(5) Elementary school.—The term ‘elementary school’ means a nonprofit institutional day or residential school that provides elementary education, as determined under State law.

“(6) Equipment.—The term ‘equipment’ includes—

“(A) machinery, utilities, and built-in equipment and any necessary enclosures or structures to house such machinery, utilities, or equipment; and

“(B) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

“(7) Excess costs.—The term ‘excess costs’ means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting—

“(A) amounts received—

“(i) under part B of this title;

“(ii) under part A of title I of the Elementary and Secondary Education Act of 1965; or

“(iii) under part A of title VII of that Act; and

“(B) any State or local funds expended for programs that would qualify for assistance under any of those parts.

“(8) Free appropriate public education.—The term ‘free appropriate public education’ means special education and related services that—

“(A) have been provided at public expense, under public supervision and direction, and without charge;

“(B) meet the standards of the State educational agency;

“(C) include an appropriate preschool, elementary, or secondary school education in the State involved; and

“(D) are provided in conformity with the individualized education program required under section 614(d).

“(9) Indian.—The term ‘Indian’ means an individual who is a member of an Indian tribe.

“(10) Indian tribe.—The term ‘Indian tribe’ means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act).

“(11) Individualized education program.—The term ‘individualized education program’ or ‘IEP’ means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 614(d).

“(12) Individualized family service plan.—The term ‘individualized family service plan’ has the meaning given such term in section 632.

“(13) Infant or toddler with a disability.—The term ‘infant or toddler with a disability’ has the meaning given such term in section 632.

“(14) Institution of higher education.—The term ‘institution of higher education’—

“(A) has the meaning given that term in section 1201(a) of the Higher Education Act of 1965; and

“(B) also includes any community college receiving funding from the Secretary of the Interior under the Tribally Controlled Community College Assistance Act of 1978.

“(15) Local educational agency.—

"(A) The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

"(B) The term includes—

"(i) an educational service agency, as defined in paragraph (4); and

"(ii) any other public institution or agency having administrative control and direction of a public elementary or secondary school.

"(C) The term includes an elementary or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

"(16) Native language.—The term 'native language', when used with reference to an individual of limited English proficiency, means the language normally used by the individual, or in the case of a child, the language normally used by the parents of the child.

"(17) Nonprofit.—The term 'nonprofit', as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"(18) Outlying area.—The term 'outlying area' means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(19) Parent.—The term 'parent'—

"(A) includes a legal guardian; and

"(B) except as used in sections 615(b)(2) and 639(a)(5), includes an individual assigned under either of those sections to be a surrogate parent.

"(20) Parent organization.—The term 'parent organization' has the meaning given that term in section 682(g).

"(21) Parent training and information center.—The term 'parent training and information center' means a center assisted under section 682 or 683.

"(22) Related services.—The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

"(23) Secondary school.—The term 'secondary school' means a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

"(24) Secretary.—The term 'Secretary' means the Secretary of Education.

"(25) Special education.—The term 'special education' means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—

"(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

"(B) instruction in physical education.

"(26) Specific learning disability.—

"(A) In general.—The term 'specific learning disability' means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

“(B) DISORDERS INCLUDED.—Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

“(C) DISORDERS NOT INCLUDED.—Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

“(27) STATE.—The term ‘State’ means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

“(28) STATE EDUCATIONAL AGENCY.—The term ‘State educational agency’ means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

“(29) SUPPLEMENTARY AIDS AND SERVICES.—The term ‘supplementary aids and services’ means, aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 612(a)(5).

“(30) TRANSITION SERVICES.—The term ‘transition services’ means a coordinated set of activities for a student with a disability that—

“(A) are designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

“(B) are based upon the individual student’s needs, taking into account the student’s preferences and interests; and

“(C) include instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

“SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.

“(a) ESTABLISHMENT.—There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs, which shall be the principal agency in such Department for administering and carrying out this Act and other programs and activities concerning the education of children with disabilities.

“(b) DIRECTOR.—The Office established under subsection (a) shall be headed by a Director who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services.

“(c) VOLUNTARY AND UNCOMPENSATED SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Secretary is authorized to accept voluntary and uncompensated services in furtherance of the purposes of this Act.

“SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.

“(a) IN GENERAL.—A State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act.

“(b) REMEDIES.—In a suit against a State for a violation of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in the suit against any public entity other than a State.

“(c) EFFECTIVE DATE.—Subsections (a) and (b) apply with respect to violations that occur in whole or part after the date of the enactment of the Education of the Handicapped Act Amendments of 1990.

“SEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION OR ALTERATION OF FACILITIES.

“(a) IN GENERAL.—If the Secretary determines that a program authorized under this Act would be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary is authorized to allow the use of those funds for those purposes.

“(b) COMPLIANCE WITH CERTAIN REGULATIONS.—Any construction of new facilities or alteration of existing facilities under subsection (a) shall comply with the requirements of—

“(1) appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the ‘Americans with Disabilities Accessibility Guidelines for Buildings and Facilities’); or

"(2) appendix A of part 101-19.6 of title 41, Code of Federal Regulations (commonly known as the 'Uniform Federal Accessibility Standards').

"SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.

"The Secretary shall ensure that each recipient of assistance under this Act makes positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act.

"SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULATIONS.

"(a) PUBLIC COMMENT PERIOD.—The Secretary shall provide a public comment period of at least 90 days on any regulation proposed under part B or part C of this Act on which an opportunity for public comment is otherwise required by law.

"(b) PROTECTIONS PROVIDED TO CHILDREN.—The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this Act that would procedurally or substantively lessen the protections provided to children with disabilities under this Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections relate to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.

"(c) POLICY LETTERS AND STATEMENTS.—The Secretary may not, through policy letters or other statements, establish a rule that is required for compliance with, and eligibility under, this part without following the requirements of section 553 of title 5, United States Code.

"(d) CORRESPONDENCE FROM DEPARTMENT OF EDUCATION DESCRIBING INTERPRETATIONS OF THIS PART.—

"(1) IN GENERAL.—The Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate to interested entities through various additional forms of communication, a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this Act or the regulations implemented pursuant to this Act.

"(2) ADDITIONAL INFORMATION.—For each item of correspondence published in a list under paragraph (1), the Secretary shall identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate.

"(e) ISSUES OF NATIONAL SIGNIFICANCE.—If the Secretary receives a written request regarding a policy, question, or interpretation under part B of this Act, and determines that it raises an issue of general interest or applicability of national significance to the implementation of part B, the Secretary shall—

"(1) include a statement to that effect in any written response;

"(2) widely disseminate that response to State educational agencies, local educational agencies, parent and advocacy organizations, and other interested organizations, subject to applicable laws relating to confidentiality of information; and

"(3) not later than one year after the date on which the Secretary responds to the written request, issue written guidance on such policy, question, or interpretation through such means as the Secretary determines to be appropriate and consistent with law, such as a policy memorandum, notice of interpretation, or notice of proposed rulemaking.

"(f) EXPLANATION.—Any written response by the Secretary under subsection (e) regarding a policy, question, or interpretation under part B of this Act shall include an explanation that the written response—

"(1) is provided as informal guidance and is not legally binding; and

"(2) represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.

"PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

"SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF APPROPRIATIONS.

"(a) GRANTS TO STATES.—

"(1) PURPOSE OF GRANTS.—The Secretary shall make grants to States and the outlying areas, and provide funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with this part.

"(2) MAXIMUM AMOUNTS.—The maximum amount of the grant a State may receive under this section for any fiscal year is—

"(A) the number of children with disabilities in the State who are receiving special education and related services—

"(i) aged three through five if the State is eligible for a grant under section 619; and

"(ii) aged six through 21; multiplied by

"(B) 40 percent of the average per-pupil expenditure in public elementary and secondary schools in the United States.

"(b) OUTLYING AREAS AND FREELY ASSOCIATED STATES.—

"(1) FUNDS RESERVED.—From the amount appropriated for any fiscal year under subsection (j), the Secretary shall reserve not more than one percent, which shall be used—

"(A) to provide assistance to the outlying areas in accordance with their respective populations of individuals aged three through 21; and

"(B) for fiscal years 1998 through 2001, to carry out the competition described in paragraph (2), except that the amount reserved to carry out that competition shall not exceed the amount reserved for fiscal year 1996 for the competition under part B of this Act described under the heading "SPECIAL EDUCATION" in Public Law 104–134.

"(2) LIMITATION FOR FREELY ASSOCIATED STATES.—

"(A) COMPETITIVE GRANTS.—The Secretary shall use funds described in paragraph (1)(B) to award grants, on a competitive basis, to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States to carry out the purposes of this part.

"(B) AWARD BASIS.—The Secretary shall award grants under subparagraph (A) on a competitive basis, pursuant to the recommendations of the Pacific Region Educational Laboratory in Honolulu, Hawaii. Those recommendations shall be made by experts in the field of special education and related services.

"(C) ASSISTANCE REQUIREMENTS.—Any freely associated State that wishes to receive funds under this part shall include, in its application for assistance—

"(i) information demonstrating that it will meet all conditions that apply to States under this part;

"(ii) an assurance that, notwithstanding any other provision of this part, it will use those funds only for the direct provision of special education and related services to children with disabilities and to enhance its capacity to make a free appropriate public education available to all children with disabilities;

"(iii) identify the source and amount of funds, in addition to funds under this part, that it will make available to ensure that a free appropriate public education is available to all children with disabilities within its jurisdiction; and

"(iv) such other information and assurances as the Secretary may require.

"(D) TERMINATION OF ELIGIBILITY.—Notwithstanding any other provision of law, the freely associated States shall not receive any funds under this part for any program year that begins after September 30, 2001.

"(E) ADMINISTRATIVE COSTS.—The Secretary may provide not more than five percent of the amount reserved for grants under this paragraph to pay the administrative costs of the Pacific Region Educational Laboratory under subparagraph (B).

"(3) LIMITATION.—An outlying area is not eligible for a competitive award under paragraph (2) unless it receives assistance under paragraph (1)(A).

"(4) SPECIAL RULE.—The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, shall not apply to funds provided to those areas or to the freely associated States under this section.

"(5) ELIGIBILITY FOR DISCRETIONARY PROGRAMS.—The freely associated States shall be eligible to receive assistance under subpart 2 of part D of this Act until September 30, 2001.

"(6) DEFINITION.—As used in this subsection, the term 'freely associated States' means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

"(c) SECRETARY OF THE INTERIOR.—From the amount appropriated for any fiscal year under subsection (j), the Secretary shall reserve 1.226 percent to provide assistance to the Secretary of the Interior in accordance with subsection (i).

"(d) ALLOCATIONS TO STATES.—

"(1) IN GENERAL.—After reserving funds for studies and evaluations under section 674(e), and for payments to the outlying areas and the Secretary of the Interior under subsections (b) and (c), the Secretary shall allocate the remaining amount among the States in accordance with paragraph (2) or subsection (e), as the case may be.

"(2) INTERIM FORMULA.—Except as provided in subsection (e), the Secretary shall allocate the amount described in paragraph (1) among the States in accordance with section 611(a)(3), (4), and (5) and (b)(1), (2), and (3) of this Act, as in effect prior to the enactment of the Individuals with Disabilities Education Act Amendments of 1997, except that the determination of the number of children with disabilities receiving special education and related services under such section 611(a)(3) may, at the State's discretion, be calculated as of the last Friday in October or as of December 1 of the fiscal year for which the funds are appropriated.

"(e) PERMANENT FORMULA.—

"(1) ESTABLISHMENT OF BASE YEAR.—The Secretary shall allocate the amount described in subsection (d)(1) among the States in accordance with this subsection for each fiscal year beginning with the first fiscal year for which the amount appropriated under subsection (j) is more than $4,924,672,200.

"(2) USE OF BASE YEAR.—

"(A) DEFINITION.—As used in this subsection, the term 'base year' means the fiscal year preceding the first fiscal year in which this subsection applies.

"(B) SPECIAL RULE FOR USE OF BASE YEAR AMOUNT.—If a State received any funds under this section for the base year on the basis of children aged three through five, but does not make a free appropriate public education available to all children with disabilities aged three through five in the State in any subsequent fiscal year, the Secretary shall compute the State's base year amount, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (3) or (4), by subtracting the amount allocated to the State for the base year on the basis of those children.

"(3) INCREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) is equal to or greater than the amount allocated to the States under this paragraph for the preceding fiscal year, those allocations shall be calculated as follows:

"(A)(i) Except as provided in subparagraph (B), the Secretary shall—

"(I) allocate to each State the amount it received for the base year;

"(II) allocate 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of a free appropriate public education under this part; and

"(III) allocate 15 percent of those remaining funds to States on the basis of their relative populations of children described in subclause (II) who are living in poverty.

"(ii) For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

"(B) Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

"(i) No State's allocation shall be less than its allocation for the preceding fiscal year.

"(ii) No State's allocation shall be less than the greatest of—

"(I) the sum of—

"(aa) the amount it received for the base year; and

"(bb) one third of one percent of the amount by which the amount appropriated under subsection (j) exceeds the amount appropriated under this section for the base year;

"(II) the sum of—

"(aa) the amount it received for the preceding fiscal year; and “(bb) that amount multiplied by the percentage by which the increase in the funds appropriated from the preceding fiscal year exceeds 1.5 percent; or

“(III) the sum of—

“(aa) the amount it received for the preceding fiscal year; and

“(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated from the preceding fiscal year.

“(iii) Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of—

“(I) the amount it received for the preceding fiscal year; and

“(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated.

“(C) If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

“(4) DECREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

“(A) If the amount available for allocations is greater than the amount allocated to the States for the base year, each State shall be allocated the sum of—

“(i) the amount it received for the base year; and

“(ii) an amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over the base year bears to the total of all such increases for all States.

“(B)(i) If the amount available for allocations is equal to or less than the amount allocated to the States for the base year, each State shall be allocated the amount it received for the base year.

“(ii) If the amount available is insufficient to make the allocations described in clause (i), those allocations shall be ratably reduced.

“(f) STATE-LEVEL ACTIVITIES.—

“(1) GENERAL.—

“(A) Each State may retain not more than the amount described in subparagraph (B) for administration and other State-level activities in accordance with paragraphs (2) and (3).

“(B) For each fiscal year, the Secretary shall determine and report to the State educational agency an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

“(i) the percentage increase, if any, from the preceding fiscal year in the State's allocation under this section; or

“(ii) the rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

“(C) A State may use funds it retains under subparagraph (A) without regard to—

“(i) the prohibition on commingling of funds in section 612(a)(18)(B); and

“(ii) the prohibition on supplanting other funds in section 612(a)(18)(C).

“(2) STATE ADMINISTRATION.—

“(A) For the purpose of administering this part, including section 619 (including the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities)—

“(i) each State may use not more than twenty percent of the maximum amount it may retain under paragraph (1)(A) for any fiscal year or $500,000 (adjusted by the cumulative rate of inflation since fiscal year 1998, as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), whichever is greater; and "(ii) each outlying area may use up to five percent of the amount it receives under this section for any fiscal year or $35,000, whichever is greater.

"(B) Funds described in subparagraph (A) may also be used for the administration of part C of this Act, if the State educational agency is the lead agency for the State under that part.

"(3) Other State-level activities.—Each State shall use any funds it retains under paragraph (1) and does not use for administration under paragraph (2) for any of the following:

"(A) Support and direct services, including technical assistance and personnel development and training.

"(B) Administrative costs of monitoring and complaint investigation, but only to the extent that those costs exceed the costs incurred for those activities during fiscal year 1985.

"(C) To establish and implement the mediation process required by section 615(e), including providing for the costs of mediators and support personnel.

"(D) To assist local educational agencies in meeting personnel shortages.

"(E) To develop a State Improvement Plan under subpart 1 of part D.

"(F) Activities at the State and local levels to meet the performance goals established by the State under section 612(a)(16) and to support implementation of the State Improvement Plan under subpart 1 of part D if the State receives funds under that subpart.

"(G) To supplement other amounts used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under this section. This system shall be coordinated with and, to the extent appropriate, build on the system of coordinated services developed by the State under part C of this Act.

"(H) For subgrants to local educational agencies for the purposes described in paragraph (4)(A).

"(4)(A) Subgrants to Local Educational Agencies for Capacity-Building and Improvement.—In any fiscal year in which the percentage increase in the State's allocation under this section exceeds the rate of inflation (as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), each State shall reserve, from its allocation under this section, the amount described in subparagraph (B) to make subgrants to local educational agencies, unless that amount is less than $100,000, to assist them in providing direct services and in making systemic change to improve results for children with disabilities through one or more of the following:

"(i) Direct services, including alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools.

"(ii) Addressing needs or carrying out improvement strategies identified in the State's Improvement Plan under subpart 1 of part D.

"(iii) Adopting promising practices, materials, and technology, based on knowledge derived from education research and other sources.

"(iv) Establishing, expanding, or implementing interagency agreements and arrangements between local educational agencies and other agencies or organizations concerning the provision of services to children with disabilities and their families.

"(v) Increasing cooperative problem-solving between parents and school personnel and promoting the use of alternative dispute resolution.

"(B) Maximum subgrant.—For each fiscal year, the amount referred to in subparagraph (A) is—

"(i) the maximum amount the State was allowed to retain under paragraph (1)(A) for the prior fiscal year, or for fiscal year 1998, 25 percent of the State's allocation for fiscal year 1997 under this section; multiplied by

"(ii) the difference between the percentage increase in the State's allocation under this section and the rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

"(5) Report on Use of Funds.—As part of the information required to be submitted to the Secretary under section 612, each State shall annually describe—

"(A) how amounts retained under paragraph (1) will be used to meet the requirements of this part;

"(B) how those amounts will be allocated among the activities described in paragraphs (2) and (3) to meet State priorities based on input from local educational agencies; and

"(C) the percentage of those amounts, if any, that will be distributed to local educational agencies by formula.

"(g) Subgrants to Local Educational Agencies.—

"(1) Subgrants required.—Each State that receives a grant under this section for any fiscal year shall distribute any funds it does not retain under subsection (f) (at least 75 percent of the grant funds) to local educational agencies in the State that have established their eligibility under section 613, and to State agencies that received funds under section 614A(a) of this Act for fiscal year 1997, as then in effect, and have established their eligibility under section 613, for use in accordance with this part.

"(2) Allocations to local educational agencies.—

"(A) Interim procedure.—For each fiscal year for which funds are allocated to States under subsection (d)(2), each State shall allocate funds under paragraph (1) in accordance with section 611(d) of this Act, as in effect prior to the enactment of the Individuals with Disabilities Education Act Amendments of 1997.

"(B) Permanent procedure.—For each fiscal year for which funds are allocated to States under subsection (e), each State shall allocate funds under paragraph (1) as follows:

"(i) Base payments.—The State shall first award each agency described in paragraph (1) the amount that agency would have received under this section for the base year, as defined in subsection (e)(2)(A), if the State had distributed 75 percent of its grant for that year under section 611(d), as then in effect.

"(ii) Allocation of remaining funds.—After making allocations under clause (i), the State shall—

"(I) allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction; and

"(II) allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

"(3) Former chapter 1 State agencies.—

"(A) To the extent necessary, the State—

"(i) shall use funds that are available under subsection (f)(1)(A) to ensure that each State agency that received fiscal year 1994 funds under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 receives, from the combination of funds under subsection (f)(1)(A) and funds provided under paragraph (1) of this subsection, an amount equal to—

"(I) the number of children with disabilities, aged 6 through 21, to whom the agency was providing special education and related services on December 1 of the fiscal year for which the funds were appropriated, subject to the limitation in subparagraph (B); multiplied by

"(II) the per-child amount provided under such subpart for fiscal year 1994; and

"(ii) may use those funds to ensure that each local educational agency that received fiscal year 1994 funds under that subpart for children who had transferred from a State-operated or State-supported school or program assisted under that subpart receives, from the combination of funds available under subsection (f)(1)(A) and funds provided under paragraph (1) of this subsection, an amount for each such child, aged 3 through 21 to whom the agency was providing special education and related services on December 1 of the fiscal year for which the funds were appropriated, equal to the per-child amount the agency received under that subpart for fiscal year 1994.

"(B) The number of children counted under subparagraph (A)(i)(I) shall not exceed the number of children aged 3 through 21 for whom the agency received fiscal year 1994 funds under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

“(4) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that agency with State and local funds, the State educational agency may reallocate any portion of the funds under this part that are not needed by that local agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve.

“(h) DEFINITIONS.—For the purpose of this section—

“(1) the term ‘average per-pupil expenditure in public elementary and secondary schools in the United States’ means—

“(A) without regard to the source of funds—

“(i) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the 50 States and the District of Columbia); plus

“(ii) any direct expenditures by the State for the operation of those agencies; divided by

“(B) the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year; and

“(2) the term ‘State’ means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

“(i) USE OF AMOUNTS BY SECRETARY OF THE INTERIOR.—

“(1) PROVISION OF AMOUNTS FOR ASSISTANCE.—

“(A) IN GENERAL.—The Secretary of Education shall provide amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of such payment for any fiscal year shall be equal to 80 percent of the amount allotted under subsection (c) for that fiscal year.

“(B) CALCULATION OF NUMBER OF CHILDREN.—In the case of Indian students ages 3 to 5, inclusive, who are enrolled in programs affiliated with Bureau of Indian Affairs (hereafter in this subsection referred to as ‘BIA’) schools and that are required by the States in which such schools are located to attain or maintain State accreditation, and which schools have such accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school shall be allowed to count those children for the purpose of distribution of the funds provided under this paragraph to the Secretary of the Interior. The Secretary of the Interior shall be responsible for meeting all of the requirements of this part for these children, in accordance with paragraph (2).

“(C) ADDITIONAL REQUIREMENT.—With respect to all other children aged 3 to 21, inclusive, on reservations, the State educational agency shall be responsible for ensuring that all of the requirements of this part are implemented.

“(2) SUBMISSION OF INFORMATION.—The Secretary of Education may provide the Secretary of the Interior amounts under paragraph (1) for a fiscal year only if the Secretary of the Interior submits to the Secretary of Education information that—

“(A) demonstrates that the Department of the Interior meets the appropriate requirements, as determined by the Secretary of Education, of sections 612 (including monitoring and evaluation activities) and 613;

“(B) includes a description of how the Secretary of the Interior will coordinate the provision of services under this part with local educational agencies, tribes and tribal organizations, and other private and Federal service providers;

“(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures described in subparagraph (A);

“(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with section 618;

"(E) includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (such agreement shall provide for the apportionment of responsibilities and costs including, but not limited to, child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program); and

"(F) includes an assurance that the Department of the Interior will cooperate with the Department of Education in its exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under this part, and will fulfill its duties under this part.

Section 616(a) shall apply to the information described in this paragraph.

"(3) PAYMENTS FOR EDUCATION AND SERVICES FOR INDIAN CHILDREN WITH DISABILITIES AGED 3 THROUGH 5.—

"(A) IN GENERAL.—With funds appropriated under subsection (j), the Secretary of Education shall make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of the above to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be equal to 20 percent of the amount allotted under subsection (c).

"(B) DISTRIBUTION OF FUNDS.—The Secretary of the Interior shall distribute the total amount of the payment under subparagraph (A) by allocating to each tribe or tribal organization an amount based on the number of children with disabilities ages 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

"(C) SUBMISSION OF INFORMATION.—To receive a payment under this paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as required to determine the amounts to be allocated under subparagraph (B). This information shall be compiled and submitted to the Secretary of Education.

"(D) USE OF FUNDS.—The funds received by a tribe or tribal organization shall be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

"(E) BIENNIAL REPORT.—To be eligible to receive a grant pursuant to subparagraph (A), the tribe or tribal organization shall provide to the Secretary of the Interior a biennial report of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the one in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary of Education required under this subsection. The Secretary of Education may require any additional information from the Secretary of the Interior.

"(F) PROHIBITIONS.—None of the funds allocated under this paragraph may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

"(4) PLAN FOR COORDINATION OF SERVICES.—The Secretary of the Interior shall develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under this Act. Such plan shall provide for the coordination of services benefiting these children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing the plan, the Secretary of the Interior shall consult with all interested and involved parties. It shall be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities. The plan shall also be distributed upon request to States, State and local educational agencies, and other agencies providing services to infants, toddlers, and children with disabilities, to tribes, and to other interested parties.

"(5) ESTABLISHMENT OF ADVISORY BOARD.—To meet the requirements of section 612(a)(21), the Secretary of the Interior shall establish, not later than 6 months after the date of the enactment of the Individuals with Disabilities Education Act Amendments of 1997, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 641 in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall—

"(A) assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities;

"(B) advise and assist the Secretary of the Interior in the performance of the Secretary's responsibilities described in this subsection;

"(C) develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;

"(D) provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved educational programming for Indian infants, toddlers, and children with disabilities; and

"(E) provide assistance in the preparation of information required under paragraph (2)(D).

"(6) ANNUAL REPORTS.—

"(A) IN GENERAL.—The advisory board established under paragraph (5) shall prepare and submit to the Secretary of the Interior and to the Congress an annual report containing a description of the activities of the advisory board for the preceding year.

"(B) AVAILABILITY.—The Secretary of the Interior shall make available to the Secretary of Education the report described in subparagraph (A).

"(j) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this part, other than section 619, there are authorized to be appropriated such sums as may be necessary.

"SEC. 612. STATE ELIGIBILITY.

"(a) IN GENERAL.—A State is eligible for assistance under this part for a fiscal year if the State demonstrates to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets each of the following conditions:

"(1) FREE APPROPRIATE PUBLIC EDUCATION.—

"(A) IN GENERAL.—A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

"(B) LIMITATION.—The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children:

"(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and

"(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this part be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility:

"(I) were not actually identified as being a child with a disability under section 602(3) of this Act; or

"(II) did not have an Individualized Education Program under this part.

"(2) FULL EDUCATIONAL OPPORTUNITY GOAL.—The State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.

"(3) CHILD FIND.—

"(A) IN GENERAL.—All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

"(B) CONSTRUCTION.—Nothing in this Act requires that children be classified by their disability so long as each child who has a disability listed in section 602 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part.

"(4) INDIVIDUALIZED EDUCATION PROGRAM.—An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with section 614(d).

"(5) LEAST RESTRICTIVE ENVIRONMENT.—

"(A) IN GENERAL.—To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

"(B) ADDITIONAL REQUIREMENT.—

"(i) IN GENERAL.—If the State uses a funding mechanism by which the State distributes State funds on the basis of the type of setting in which a child is served, the funding mechanism does not result in placements that violate the requirements of subparagraph (A).

"(ii) ASSURANCE.—If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that it will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

"(6) PROCEDURAL SAFEGUARDS.—

"(A) IN GENERAL.—Children with disabilities and their parents are afforded the procedural safeguards required by section 615.

"(B) ADDITIONAL PROCEDURAL SAFEGUARDS.—Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

"(7) EVALUATION.—Children with disabilities are evaluated in accordance with subsections (a) through (c) of section 614.

"(8) CONFIDENTIALITY.—Agencies in the State comply with section 617(c) (relating to the confidentiality of records and information).

"(9) TRANSITION FROM PART C TO PRESCHOOL PROGRAMS.—Children participating in early-intervention programs assisted under part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(8). By the third birthday of such a child, an individualized education program or, if consistent with sections 614(d)(2)(B) and 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 637(a)(8).

"(10) CHILDREN IN PRIVATE SCHOOLS.—

"(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.—

"(i) In general.—To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary and secondary schools, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

"(I) Amounts expended for the provision of those services by a local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.

"(II) Such services may be provided to children with disabilities on the premises of private, including parochial, schools, to the extent consistent with law.

"(ii) Child-find requirement.—The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including parochial, elementary and secondary schools.

"(B) Children placed in, or referred to, private schools by public agencies.—

"(i) In general.—Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

"(ii) Standards.—In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies.

"(C) Payment for education of children enrolled in private schools without consent of or referral by the public agency.—

"(i) In general.—Subject to subparagraph (A), this part does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

"(ii) Reimbursement for private school placement.—If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

"(iii) Limitation on reimbursement.—The cost of reimbursement described in clause (ii) may be reduced or denied—

"(I) if—

"(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

"(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in division (aa);

"(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(7), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

"(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

"(iv) EXCEPTION.—Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement may not be reduced or denied for failure to provide such notice if—

"(I) the parent is illiterate and cannot write in English;

"(II) compliance with clause (iii)(I) would likely result in physical or serious emotional harm to the child;

"(III) the school prevented the parent from providing such notice; or

"(IV) the parents had not received notice, pursuant to section 615, of the notice requirement in clause (iii)(I).

"(11) STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION.—

"(A) IN GENERAL.—The State educational agency is responsible for ensuring that—

"(i) the requirements of this part are met; and

"(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State or local agency—

"(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

"(II) meet the educational standards of the State educational agency.

"(B) LIMITATION.—Subparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the State.

"(C) EXCEPTION.—Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

"(12) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.—

"(A) ESTABLISHING RESPONSIBILITY FOR SERVICES.—The Chief Executive Officer or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

"(i) AGENCY FINANCIAL RESPONSIBILITY.—An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State Medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).

"(ii) CONDITIONS AND TERMS OF REIMBURSEMENT.—The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

"(iii) INTERAGENCY DISPUTES.—Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

"(iv) COORDINATION OF SERVICES PROCEDURES.—Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

"(B) OBLIGATION OF PUBLIC AGENCY.—

"(i) IN GENERAL.—If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in sections 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(22) relating to related services, 602(29) relating to supplementary aids and services, and 602(30) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

"(ii) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency may then claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).

"(C) SPECIAL RULE.—The requirements of subparagraph (A) may be met through—

"(i) STATE STATUTE OR REGULATION;

"(ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

"(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer.

"(13) PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing.

"(14) COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT.—The State has in effect, consistent with the purposes of this Act and with section 635(a)(8), a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel that meets the requirements for a State improvement plan relating to personnel development in subsections (b)(2)(B) and (c)(3)(D) of section 653.

"(15) PERSONNEL STANDARDS.—

"(A) IN GENERAL.—The State educational agency has established and maintains standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained.

"(B) STANDARDS DESCRIBED.—Such standards shall—

"(i) be consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;

"(ii) to the extent the standards described in subparagraph (A) are not based on the highest requirements in the State applicable to a specific profession or discipline, the State is taking steps to require retraining or hiring of personnel that meet appropriate professional requirements in the State; and

"(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities under this part.

"(C) POLICY.—In implementing this paragraph, a State may adopt a policy that includes a requirement that local educational agencies in the State make an ongoing good-faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subparagraph (B)(i), consistent with State law, and the steps described in subparagraph (B)(ii) within three years.

"(16) PERFORMANCE GOALS AND INDICATORS.—The State—

"(A) has established goals for the performance of children with disabilities in the State that—

"(i) will promote the purposes of this Act, as stated in section 601(d); and

"(ii) are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State;

"(B) has established performance indicators the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;

"(C) will, every two years, report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A); and

"(D) based on its assessment of that progress, will revise its State improvement plan under subpart 1 of part D as may be needed to improve its performance, if the State receives assistance under that subpart.

"(17) PARTICIPATION IN ASSESSMENTS.—

"(A) IN GENERAL.—Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations, where necessary. As appropriate, the State or local educational agency—

"(i) develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs; and

"(ii) develops and, beginning not later than July 1, 2000, conducts those alternate assessments.

"(B) REPORTS.—The State educational agency makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

"(i) The number of children with disabilities participating in regular assessments.

"(ii) The number of those children participating in alternate assessments.

"(iii)(I) The performance of those children on regular assessments (beginning not later than July 1, 1998) and on alternate assessments (not later than July 1, 2000), if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.

"(II) Data relating to the performance of children described under subclause (I) shall be disaggregated—

"(aa) for assessments conducted after July 1, 1998; and

"(bb) for assessments conducted before July 1, 1998, if the State is required to disaggregate such data prior to July 1, 1998.

"(18) SUPPLEMENTATION OF STATE, LOCAL, AND OTHER FEDERAL FUNDS.—

"(A) EXPENDITURES.—Funds paid to a State under this part will be expended in accordance with all the provisions of this part.

"(B) PROHIBITION AGAINST COMMINGLING.—Funds paid to a State under this part will not be commingled with State funds.

"(C) PROHIBITION AGAINST SUPPLANTATION AND CONDITIONS FOR WAIVER BY SECRETARY.—Except as provided in section 613, funds paid to a State under this part will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

"(19) MAINTENANCE OF STATE FINANCIAL SUPPORT.—

"(A) IN GENERAL.—The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

"(B) REDUCTION OF FUNDS FOR FAILURE TO MAINTAIN SUPPORT.—The Secretary shall reduce the allocation of funds under section 611 for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.

"(C) WAIVERS FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES.—The Secretary may waive the requirement of subparagraph (A) for a State, for one fiscal year at a time, if the Secretary determines that—

"(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

"(ii) the State meets the standard in paragraph (18)(C) of this section for a waiver of the requirement to supplement, and not to supplant, funds received under this part.

"(D) SUBSEQUENT YEARS.—If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

"(E) REGULATIONS.—

(i) The Secretary shall, by regulation, establish procedures (including objective criteria and consideration of the results of compliance reviews of the State conducted by the Secretary) for determining whether to grant a waiver under subparagraph (C)(ii).

"(ii) The Secretary shall publish proposed regulations under clause (i) not later than 6 months after the date of the enactment of the Individuals with Disabilities Education Act Amendments of 1997, and shall issue final regulations under clause (i) not later than 1 year after such date of enactment.

"(20) PUBLIC PARTICIPATION.—Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

"(21) STATE ADVISORY PANEL.—

"(A) IN GENERAL.—The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

"(B) MEMBERSHIP.—Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with, the education of children with disabilities, including—

"(i) parents of children with disabilities;

"(ii) individuals with disabilities;

"(iii) teachers;

"(iv) representatives of institutions of higher education that prepare special education and related services personnel;

"(v) State and local education officials;

"(vi) administrators of programs for children with disabilities;

"(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

"(viii) representatives of private schools and public charter schools;

"(ix) at least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and

"(x) representatives from the State juvenile and adult corrections agencies.

"(C) SPECIAL RULE.—A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities.

"(D) DUTIES.—The advisory panel shall—

"(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;

"(ii) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

"(iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 618;

"(iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this part; and

"(v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.

"(22) SUSPENSION AND EXPULSION RATES.—

"(A) IN GENERAL.—The State educational agency examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—

"(i) among local educational agencies in the State; or

"(ii) compared to such rates for nondisabled children within such agencies.

"(B) REVIEW AND REVISION OF POLICIES.—If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this Act.

"(b) STATE EDUCATIONAL AGENCY AS PROVIDER OF FREE APPROPRIATE PUBLIC EDUCATION OR DIRECT SERVICES.—If the State educational agency provides free appropriate public education to children with disabilities, or provides direct services to such children, such agency—

"(1) shall comply with any additional requirements of section 613(a), as if such agency were a local educational agency; and

"(2) may use amounts that are otherwise available to such agency under this part to serve those children without regard to section 613(a)(2)(A)(i) (relating to excess costs).

"(c) EXCEPTION FOR PRIOR STATE PLANS.—

"(1) IN GENERAL.—If a State has on file with the Secretary policies and procedures that demonstrate that such State meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this part.

"(2) MODIFICATIONS MADE BY STATE.—Subject to paragraph (3), an application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State deems necessary. This section shall apply to a modification to an application to the same extent and in the same manner as this section applies to the original plan.

"(3) MODIFICATIONS REQUIRED BY THE SECRETARY.—If, after the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), or there is a new interpretation of this Act by a Federal or State Supreme court, or there is an official finding of noncompliance with Federal law or regulations, the Secretary may require a State to modify its application only to the extent necessary to ensure the State's compliance with this part.

"(d) APPROVAL BY THE SECRETARY.—

"(1) IN GENERAL.—If the Secretary determines that a State is eligible to receive a grant under this part, the Secretary shall notify the State of that determination.

"(2) NOTICE AND HEARING.—The Secretary shall not make a final determination that a State is not eligible to receive a grant under this part until after providing the State—

"(A) with reasonable notice; and

"(B) with an opportunity for a hearing.

"(e) ASSISTANCE UNDER OTHER FEDERAL PROGRAMS.—Nothing in this title permits a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities in the State.

"(f) BY-PASS FOR CHILDREN IN PRIVATE SCHOOLS.—

"(1) In general.—If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency is prohibited by law from providing for the participation in special programs of children with disabilities enrolled in private elementary and secondary schools as required by subsection (a)(10)(A), the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements which shall be subject to the requirements of such subsection.

"(2) Payments.—

"(A) Determination of amounts.—If the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services for a fiscal year an amount per child that does not exceed the amount determined by dividing—

"(i) the total amount received by the State under this part for such fiscal year; by

"(ii) the number of children with disabilities served in the prior year, as reported to the Secretary by the State under section 618.

"(B) Withholding of certain amounts.—Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates would be necessary to pay the cost of services described in subparagraph (A).

"(C) Period of payments.—The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(10)(A).

"(3) Notice and hearing.—

"(A) In general.—The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why such action should not be taken.

"(B) Review of action.—If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's action, as provided in section 2112 of title 28, United States Code.

"(C) Review of findings of fact.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(D) Jurisdiction of court of appeals; review by United States Supreme Court.—Upon the filing of a petition under subparagraph (B), the United States court of appeals shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.

"(a) In General.—A local educational agency is eligible for assistance under this part for a fiscal year if such agency demonstrates to the satisfaction of the State educational agency that it meets each of the following conditions:

"(1) Consistency with state policies.—The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 612.

"(2) Use of amounts.—

"(A) In general.—Amounts provided to the local educational agency under this part shall be expended in accordance with the applicable provisions of this part and—

"(i) shall be used only to pay the excess costs of providing special education and related services to children with disabilities;

"(ii) shall be used to supplement State, local, and other Federal funds and not to supplant such funds; and

"(iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

"(B) Exception.—Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to—

"(i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;

"(ii) a decrease in the enrollment of children with disabilities;

"(iii) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child—

"(I) has left the jurisdiction of the agency;

"(II) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or

"(III) no longer needs such program of special education; or

"(iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

"(C) Treatment of Federal funds in certain fiscal years.—

(i) Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which amounts appropriated to carry out section 611 exceeds $4,100,000,000, a local educational agency may treat as local funds, for the purpose of such clauses, up to 20 percent of the amount of funds it receives under this part that exceeds the amount it received under this part for the previous fiscal year.

"(ii) Notwithstanding clause (i), if a State educational agency determines that a local educational agency is not meeting the requirements of this part, the State educational agency may prohibit the local educational agency from treating funds received under this part as local funds under clause (i) for any fiscal year, only if it is authorized to so by the State constitution or a State statute.

"(D) Schoolwide programs under title I of the ESEA.—Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed—

"(i) the number of children with disabilities participating in the schoolwide program; multiplied by

"(ii)(I) the amount received by the local educational agency under this part for that fiscal year; divided by

"(II) the number of children with disabilities in the jurisdiction of that agency.

"(3) Personnel development.—The local educational agency—

"(A) shall ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, consistent with the requirements of section 653(c)(3)(D); and

"(B) to the extent such agency determines appropriate, shall contribute to and use the comprehensive system of personnel development of the State established under section 612(a)(14).

"(4) Permissive use of funds.—Notwithstanding paragraph (2)(A) or section 612(a)(18)(B) (relating to commingled funds), funds provided to the local educational agency under this part may be used for the following activities:

"(A) Services and aids that also benefit nondisabled children.—For the costs of special education and related services and supplementary aids and services provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if one or more nondisabled children benefit from such services.

"(B) INTEGRATED AND COORDINATED SERVICES SYSTEM.—To develop and implement a fully integrated and coordinated services system in accordance with subsection (f).

"(5) TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS.—In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency—

"(A) serves children with disabilities attending those schools in the same manner as it serves children with disabilities in its other schools; and

"(B) provides funds under this part to those schools in the same manner as it provides those funds to its other schools.

"(6) INFORMATION FOR STATE EDUCATIONAL AGENCY.—The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (16) and (17) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.

"(7) PUBLIC INFORMATION.—The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the eligibility of such agency under this part.

"(b) EXCEPTION FOR PRIOR LOCAL PLANS.—

"(1) IN GENERAL.—If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this part.

"(2) MODIFICATION MADE BY LOCAL EDUCATIONAL AGENCY.—Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain in effect until it submits to the State educational agency such modifications as the local educational agency deems necessary.

"(3) MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY.—If, after the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), or there is a new interpretation of this Act by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, the State educational agency may require a local educational agency to modify its application only to the extent necessary to ensure the local educational agency's compliance with this part or State law.

"(c) NOTIFICATION OF LOCAL EDUCATIONAL AGENCY OR STATE AGENCY IN CASE OF INELIGIBILITY.—If the State educational agency determines that a local educational agency or State agency is not eligible under this section, the State educational agency shall notify the local educational agency or State agency, as the case may be, of that determination and shall provide such local educational agency or State agency with reasonable notice and an opportunity for a hearing.

"(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—

"(1) IN GENERAL.—If the State educational agency, after reasonable notice and an opportunity for a hearing, finds that a local educational agency or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in subsection (a), the State educational agency shall reduce or shall not provide any further payments to the local educational agency or State agency until the State educational agency is satisfied that the local educational agency or State agency, as the case may be, is complying with that requirement.

"(2) ADDITIONAL REQUIREMENT.—Any State agency or local educational agency in receipt of a notice described in paragraph (1) shall, by means of public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

"(3) CONSIDERATION.—In carrying out its responsibilities under paragraph (1), the State educational agency shall consider any decision made in a hearing held under section 615 that is adverse to the local educational agency or State agency involved in that decision.

"(e) JOINT ESTABLISHMENT OF ELIGIBILITY.—

"(1) JOINT ESTABLISHMENT.—

"(A) IN GENERAL.—A State educational agency may require a local educational agency to establish its eligibility jointly with another local educational agency if the State educational agency determines that the local educational agency would be ineligible under this section because the local educational agency would not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

"(B) CHARTER SCHOOL EXCEPTION.—A State educational agency may not require a charter school that is a local educational agency to jointly establish its eligibility under subparagraph (A) unless it is explicitly permitted to do so under the State's charter school statute.

"(2) AMOUNT OF PAYMENTS.—If a State educational agency requires the joint establishment of eligibility under paragraph (1), the total amount of funds made available to the affected local educational agencies shall be equal to the sum of the payments that each such local educational agency would have received under section 611(g) if such agencies were eligible for such payments.

"(3) REQUIREMENTS.—Local educational agencies that establish joint eligibility under this subsection shall—

"(A) adopt policies and procedures that are consistent with the State's policies and procedures under section 612(a); and

"(B) be jointly responsible for implementing programs that receive assistance under this part.

"(4) REQUIREMENTS FOR EDUCATIONAL SERVICE AGENCIES.—

"(A) IN GENERAL.—If an educational service agency is required by State law to carry out programs under this part, the joint responsibilities given to local educational agencies under this subsection shall—

"(i) not apply to the administration and disbursement of any payments received by that educational service agency; and

"(ii) be carried out only by that educational service agency.

"(B) ADDITIONAL REQUIREMENT.—Notwithstanding any other provision of this subsection, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by section 612(a)(5).

"(f) COORDINATED SERVICES SYSTEM.—

"(1) IN GENERAL.—A local educational agency may not use more than 5 percent of the amount such agency receives under this part for any fiscal year, in combination with other amounts (which shall include amounts other than education funds), to develop and implement a coordinated services system designed to improve results for children and families, including children with disabilities and their families.

"(2) ACTIVITIES.—In implementing a coordinated services system under this subsection, a local educational agency may carry out activities that include—

"(A) improving the effectiveness and efficiency of service delivery, including developing strategies that promote accountability for results;

"(B) service coordination and case management that facilitates the linkage of individualized education programs under this part and individualized family service plans under part C with individualized service plans under multiple Federal and State programs, such as title I of the Rehabilitation Act of 1973 (vocational rehabilitation), title XIX of the Social Security Act (Medicaid), and title XVI of the Social Security Act (supplemental security income);

"(C) developing and implementing interagency financing strategies for the provision of education, health, mental health, and social services, including transition services and related services under this Act; and

"(D) interagency personnel development for individuals working on coordinated services.

"(3) COORDINATION WITH CERTAIN PROJECTS UNDER ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—If a local educational agency is carrying out a coordinated services project under title XI of the Elementary and Secondary Education Act of 1965 and a coordinated services project under this part in the same schools, such agency shall use amounts under this subsection in accordance with the requirements of that title.

"(g) SCHOOL-BASED IMPROVEMENT PLAN.—

"(1) IN GENERAL.—Each local educational agency may, in accordance with paragraph (2), use funds made available under this part to permit a public school within the jurisdiction of the local educational agency to design, implement, and evaluate a school-based improvement plan that is consistent with the purposes described in section 651(b) and that is designed to improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with subparagraphs (A) and (B) of subsection (a)(4) in that public school.

"(2) AUTHORITY.—

"(A) IN GENERAL.—A State educational agency may grant authority to a local educational agency to permit a public school described in paragraph (1) (through a school-based standing panel established under paragraph (4)(B)) to design, implement, and evaluate a school-based improvement plan described in paragraph (1) for a period not to exceed 3 years.

"(B) RESPONSIBILITY OF LOCAL EDUCATIONAL AGENCY.—If a State educational agency grants the authority described in subparagraph (A), a local educational agency that is granted such authority shall have the sole responsibility of oversight of all activities relating to the design, implementation, and evaluation of any school-based improvement plan that a public school is permitted to design under this subsection.

"(3) PLAN REQUIREMENTS.—A school-based improvement plan described in paragraph (1) shall—

"(A) be designed to be consistent with the purposes described in section 651(b) and to improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with subparagraphs (A) and (B) of subsection (a)(4), who attend the school for which the plan is designed and implemented;

"(B) be designed, evaluated, and, as appropriate, implemented by a school-based standing panel established in accordance with paragraph (4)(B);

"(C) include goals and measurable indicators to assess the progress of the public school in meeting such goals; and

"(D) ensure that all children with disabilities receive the services described in the individualized education programs of such children.

"(4) RESPONSIBILITIES OF THE LOCAL EDUCATIONAL AGENCY.—A local educational agency that is granted authority under paragraph (2) to permit a public school to design, implement, and evaluate a school-based improvement plan shall—

"(A) select each school under the jurisdiction of such agency that is eligible to design, implement, and evaluate such a plan;

"(B) require each school selected under subparagraph (A), in accordance with criteria established by such local educational agency under subparagraph (C), to establish a school-based standing panel to carry out the duties described in paragraph (3)(B);

"(C) establish—

"(i) criteria that shall be used by such local educational agency in the selection of an eligible school under subparagraph (A);

"(ii) criteria that shall be used by a public school selected under subparagraph (A) in the establishment of a school-based standing panel to carry out the duties described in paragraph (3)(B) and that shall ensure that the membership of such panel reflects the diversity of the community in which the public school is located and includes, at a minimum—

"(I) parents of children with disabilities who attend such public school, including parents of children with disabilities from unserved and underserved populations, as appropriate;

"(II) special education and general education teachers of such public school;

"(III) special education and general education administrators, or the designee of such administrators, of such public school; and

"(IV) related services providers who are responsible for providing services to the children with disabilities who attend such public school; and

"(iii) criteria that shall be used by such local educational agency with respect to the distribution of funds under this part to carry out this subsection;

"(D) disseminate the criteria established under subparagraph (C) to local school district personnel and local parent organizations within the jurisdiction of such local educational agency;

"(E) require a public school that desires to design, implement, and evaluate a school-based improvement plan to submit an application at such time, in such manner, and accompanied by such information as such local educational agency shall reasonably require; and

"(F) establish procedures for approval by such local educational agency of a school-based improvement plan designed under this subsection.

"(5) LIMITATION.—A school-based improvement plan described in paragraph (1) may be submitted to a local educational agency for approval only if a consensus with respect to any matter relating to the design, implementation, or evaluation of the goals of such plan is reached by the school-based standing panel that designed such plan.

"(6) ADDITIONAL REQUIREMENTS.—

"(A) PARENTAL INVOLVEMENT.—In carrying out the requirements of this subsection, a local educational agency shall ensure that the parents of children with disabilities are involved in the design, evaluation, and, where appropriate, implementation of school-based improvement plans in accordance with this subsection.

"(B) PLAN APPROVAL.—A local educational agency may approve a school-based improvement plan of a public school within the jurisdiction of such agency for a period of 3 years, if—

"(i) the approval is consistent with the policies, procedures, and practices established by such local educational agency and in accordance with this subsection; and

"(ii) a majority of parents of children who are members of the school-based standing panel, and a majority of other members of the school-based standing panel, that designed such plan agree in writing to such plan.

"(7) EXTENSION OF PLAN.—If a public school within the jurisdiction of a local educational agency meets the applicable requirements and criteria described in paragraphs (3) and (4) at the expiration of the 3-year approval period described in paragraph (6)(B), such agency may approve a school-based improvement plan of such school for an additional 3-year period.

"(h) DIRECT SERVICES BY THE STATE EDUCATIONAL AGENCY.—

"(1) IN GENERAL.—A State educational agency shall use the payments that would otherwise have been available to a local educational agency or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local agency, or for whom that State agency is responsible, if the State educational agency determines that the local education agency or State agency, as the case may be—

"(A) has not provided the information needed to establish the eligibility of such agency under this section;

"(B) is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a);

"(C) is unable or unwilling to be consolidated with one or more local educational agencies in order to establish and maintain such programs; or

"(D) has one or more children with disabilities who can best be served by a regional or State program or service-delivery system designed to meet the needs of such children.

"(2) MANNER AND LOCATION OF EDUCATION AND SERVICES.—The State educational agency may provide special education and related services under paragraph (1) in such manner and at such locations (including regional or State centers) as the State agency considers appropriate. Such education and services shall be provided in accordance with this part.

"(i) STATE AGENCY ELIGIBILITY.—Any State agency that desires to receive a subgrant for any fiscal year under section 611(g) shall demonstrate to the satisfaction of the State educational agency that—

"(1) all children with disabilities who are participating in programs and projects funded under this part receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

"(2) the agency meets such other conditions of this section as the Secretary determines to be appropriate.

"(j) DISCIPLINARY INFORMATION.—The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

"SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.

"(a) Evaluations and Reevaluations.—

"(1) Initial evaluations.—

"(A) In general.—A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation, in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

"(B) Procedures.—Such initial evaluation shall consist of procedures—

"(i) to determine whether a child is a child with a disability (as defined in section 602(3)); and

"(ii) to determine the educational needs of such child.

"(C) Parental consent.—

"(i) In general.—The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3)(A) or 602(3)(B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

"(ii) Refusal.—If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent.

"(2) Reevaluations.—A local educational agency shall ensure that a reevaluation of each child with a disability is conducted—

"(A) if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years; and

"(B) in accordance with subsections (b) and (c).

"(b) Evaluation Procedures.—

"(1) Notice.—The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.

"(2) Conduct of evaluation.—In conducting the evaluation, the local educational agency shall—

"(A) use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities;

"(B) not use any single procedure as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

"(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

"(3) Additional requirements.—Each local educational agency shall ensure that—

"(A) tests and other evaluation materials used to assess a child under this section—

"(i) are selected and administered so as not to be discriminatory on a racial or cultural basis; and

"(ii) are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and

"(B) any standardized tests that are given to the child—

"(i) have been validated for the specific purpose for which they are used;

"(ii) are administered by trained and knowledgeable personnel; and

"(iii) are administered in accordance with any instructions provided by the producer of such tests;

"(C) the child is assessed in all areas of suspected disability; and

"(D) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

"(4) DETERMINATION OF ELIGIBILITY.—Upon completion of administration of tests and other evaluation materials—

"(A) the determination of whether the child is a child with a disability as defined in section 602(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

"(B) a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.

"(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION.—In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency.

"(c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS.—

"(1) REVIEW OF EXISTING EVALUATION DATA.—As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team described in subsection (d)(1)(B) and other qualified professionals, as appropriate, shall—

"(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers observation; and

"(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

"(i) whether the child has a particular category of disability, as described in section 602(3), or, in case of a reevaluation of a child, whether the child continues to have such a disability;

"(ii) the present levels of performance and educational needs of the child;

"(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

"(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum.

"(2) SOURCE OF DATA.—The local educational agency shall administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

"(3) PARENTAL CONSENT.—Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(C), prior to conducting any reevaluation of a child with a disability, except that such informed parent consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

"(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED.—If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency—

"(A) shall notify the child's parents of—

"(i) that determination and the reasons for it; and

"(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability; and

"(B) shall not be required to conduct such an assessment unless requested to by the child's parents.

"(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY.—A local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

"(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

"(1) DEFINITIONS.—As used in this title:

"(A) INDIVIDUALIZED EDUCATION PROGRAM.—The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—

"(i) a statement of the child's present levels of educational performance, including—

“(I) how the child's disability affects the child's involvement and progress in the general curriculum; or

“(II) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

“(ii) a statement of measurable annual goals, including benchmarks or short-term objectives, related to—

“(I) meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; and

“(II) meeting each of the child's other educational needs that result from the child's disability;

“(iii) a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—

“(I) to advance appropriately toward attaining the annual goals;

“(II) to be involved and progress in the general curriculum in accordance with clause (i) and to participate in extracurricular and other nonacademic activities; and

“(III) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;

“(iv) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in clause (iii);

“(v)(I) a statement of any individual modifications in the administration of State or districtwide assessments of student achievement that are needed in order for the child to participate in such assessment; and

“(II) if the IEP Team determines that the child will not participate in a particular State or districtwide assessment of student achievement (or part of such an assessment), a statement of—

“(aa) why that assessment is not appropriate for the child; and

“(bb) how the child will be assessed;

“(vi) the projected date for the beginning of the services and modifications described in clause (iii), and the anticipated frequency, location, and duration of those services and modifications;

“(vii)(I) beginning at age 14, and updated annually, a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced-placement courses or a vocational education program);

“(II) beginning at age 16 (or younger, if determined appropriate by the IEP Team), a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages; and

“(III) beginning at least one year before the child reaches the age of majority under State law, a statement that the child has been informed of his or her rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m); and

“(viii) a statement of—

“(I) how the child's progress toward the annual goals described in clause (ii) will be measured; and

“(II) how the child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of—

“(aa) their child's progress toward the annual goals described in clause (ii); and

“(bb) the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

“(B) INDIVIDUALIZED EDUCATION PROGRAM TEAM.—The term ‘individualized education program team’ or ‘IEP Team’ means a group of individuals composed of—

“(i) the parents of a child with a disability;

“(ii) at least one regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

“(iii) at least one special education teacher, or where appropriate, at least one special education provider of such child;

“(iv) a representative of the local educational agency who—

"(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

"(II) is knowledgeable about the general curriculum; and

"(III) is knowledgeable about the availability of resources of the local educational agency;

"(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);

"(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

"(vii) whenever appropriate, the child with a disability.

"(2) REQUIREMENT THAT PROGRAM BE IN EFFECT.—

"(A) IN GENERAL.—At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in its jurisdiction, an individualized education program, as defined in paragraph (1)(A).

"(B) PROGRAM FOR CHILD AGED 3 THROUGH 5.—In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2 year-old child with a disability who will turn age 3 during the school year), an individualized family service plan that contains the material described in section 636, and that is developed in accordance with this section, may serve as the IEP of the child if using that plan as the IEP is—

"(i) consistent with State policy; and

"(ii) agreed to by the agency and the child's parents.

"(3) DEVELOPMENT OF IEP.—

"(A) IN GENERAL.—In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider—

"(i) the strengths of the child and the concerns of the parents for enhancing the education of their child; and

"(ii) the results of the initial evaluation or most recent evaluation of the child.

"(B) CONSIDERATION OF SPECIAL FACTORS.—The IEP Team shall—

"(i) in the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

"(ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;

"(iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

"(iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

"(v) consider whether the child requires assistive technology devices and services.

"(C) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—The regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(iii).

"(4) REVIEW AND REVISION OF IEP.—

"(A) IN GENERAL.—The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team—

"(i) reviews the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and

"(ii) revises the IEP as appropriate to address—

"(I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;

"(II) the results of any reevaluation conducted under this section;

"(III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);

"(IV) the child's anticipated needs; or

"(V) other matters.

"(B) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—The regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the review and revision of the IEP of the child.

"(5) FAILURE TO MEET TRANSITION OBJECTIVES.—If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(vii), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in that program.

"(6) CHILDREN WITH DISABILITIES IN ADULT PRISONS.—

"(A) IN GENERAL.—The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

"(i) The requirements contained in section 612(a)(17) and paragraph (1)(A)(v) of this subsection (relating to participation of children with disabilities in general assessments).

"(ii) The requirements of subclauses (I) and (II) of paragraph (1)(A)(vii) of this subsection (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of their age, before they will be released from prison.

"(B) ADDITIONAL REQUIREMENT.—If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP team may modify the child's IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) and 614(d)(1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

"(e) CONSTRUCTION.—Nothing in this section shall be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component of such IEP.

"(f) EDUCATIONAL PLACEMENTS.—Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

"SEC. 615. PROCEDURAL SAFEGUARDS.

"(a) ESTABLISHMENT OF PROCEDURES.—Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies.

"(b) TYPES OF PROCEDURES.—The procedures required by this section shall include—

"(1) an opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

"(2) procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents;

"(3) written prior notice to the parents of the child whenever such agency—

"(A) proposes to initiate or change; or

"(B) refuses to initiate or change;

the identification, evaluation, or educational placement of the child, in accordance with subsection (c), or the provision of a free appropriate public education to the child;

"(4) procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so;

"(5) an opportunity for mediation in accordance with subsection (e);

"(6) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child;

"(7) procedures that require the parent of a child with a disability, or the attorney representing the child, to provide notice (which shall remain confidential)—

"(A) to the State educational agency or local educational agency, as the case may be, in the complaint filed under paragraph (6); and

"(B) that shall include—

"(i) the name of the child, the address of the residence of the child, and the name of the school the child is attending;

"(ii) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

"(iii) a proposed resolution of the problem to the extent known and available to the parents at the time; and

"(8) procedures that require the State educational agency to develop a model form to assist parents in filing a complaint in accordance with paragraph (7).

"(c) Content of Prior Written Notice.—The notice required by subsection (b)(3) shall include—

"(1) a description of the action proposed or refused by the agency;

"(2) an explanation of why the agency proposes or refuses to take the action;

"(3) a description of any other options that the agency considered and the reasons why those options were rejected;

"(4) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;

"(5) a description of any other factors that are relevant to the agency's proposal or refusal;

"(6) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

"(7) sources for parents to contact to obtain assistance in understanding the provisions of this part.

"(d) Procedural Safeguards Notice.—

"(1) In general.—A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents, at a minimum—

"(A) upon initial referral for evaluation;

"(B) upon each notification of an individualized education program meeting and upon reevaluation of the child; and

"(C) upon registration of a complaint under subsection (b)(6).

"(2) Contents.—The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to—

"(A) independent educational evaluation;

"(B) prior written notice;

"(C) parental consent;

"(D) access to educational records;

"(E) opportunity to present complaints;

"(F) the child's placement during pendency of due process proceedings;

"(G) procedures for students who are subject to placement in an interim alternative educational setting;

"(H) requirements for unilateral placement by parents of children in private schools at public expense;

"(I) mediation;

"(J) due process hearings, including requirements for disclosure of evaluation results and recommendations;

"(K) State-level appeals (if applicable in that State);

"(L) civil actions; and

"(M) attorneys' fees.

"(e) MEDIATION.—

"(1) IN GENERAL.—Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in subsection (b)(6) to resolve such disputes through a mediation process which, at a minimum, shall be available whenever a hearing is requested under subsection (f) or (k).

"(2) REQUIREMENTS.—Such procedures shall meet the following requirements:

"(A) The procedures shall ensure that the mediation process—

"(i) is voluntary on the part of the parties;

"(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and

"(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

"(B) A local educational agency or a State agency may establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—

"(i) a parent training and information center or community parent resource center in the State established under section 682 or 683; or

"(ii) an appropriate alternative dispute resolution entity;

to encourage the use, and explain the benefits, of the mediation process to the parents.

"(C) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

"(D) The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

"(E) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

"(F) An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.

"(G) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

"(f) IMPARTIAL DUE PROCESS HEARING.—

"(1) IN GENERAL.—Whenever a complaint has been received under subsection (b)(6) or (k) of this section, the parents involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

"(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS.—

"(A) IN GENERAL.—At least 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

"(B) FAILURE TO DISCLOSE.—A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

"(3) LIMITATION ON CONDUCT OF HEARING.—A hearing conducted pursuant to paragraph (1) may not be conducted by an employee of the State educational agency or the local educational agency involved in the education or care of the child.

"(g) APPEAL.—If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency. Such agency shall conduct an impartial review of such decision. The officer conducting such review shall make an independent decision upon completion of such review.

"(h) SAFEGUARDS.—Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—

"(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

"(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

"(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

"(4) the right to written, or, at the option of the parents, electronic findings of fact and decisions (which findings and decisions shall be made available to the public consistent with the requirements of section 617(c) (relating to the confidentiality of data, information, and records) and shall also be transmitted to the advisory panel established pursuant to section 612(a)(21)).

"(i) Administrative Procedures.—

"(1) In general.—

"(A) Decision made in hearing.—A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2) of this subsection.

"(B) Decision made at appeal.—A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2) of this subsection.

"(2) Right to bring civil action.—

"(A) In general.—Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

"(B) Additional requirements.—In any action brought under this paragraph, the court—

"(i) shall receive the records of the administrative proceedings;

"(ii) shall hear additional evidence at the request of a party; and

"(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

"(3) Jurisdiction of district courts; attorneys' fees.—

"(A) In general.—The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

"(B) Award of attorneys' fees.—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

"(C) Determination of amount of attorneys' fees.—Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

"(D) Prohibition of attorneys' fees and related costs for certain services.—

"(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—

"(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

"(II) the offer is not accepted within 10 days; and

"(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

"(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e) that is conducted prior to the filing of a complaint under subsection (b)(6) or (k) of this section.

"(E) Exception to prohibition on attorneys' fees and related costs.—Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

"(F) Reduction in amount of attorneys' fees.—Except as provided in subparagraph (G), whenever the court finds that—

"(i) the parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

"(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

"(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

"(iv) the attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with subsection (b)(7);

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

"(G) Exception to reduction in amount of attorneys' fees.—The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

"(j) Maintenance of Current Educational Placement.—Except as provided in subsection (k)(7), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

"(k) Placement in Alternative Educational Setting.—

"(1) Authority of school personnel.—

"(A) School personnel under this section may order a change in the placement of a child with a disability—

"(i) to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities); and

"(ii) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if—

"(I) the child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or

"(II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

"(B) Either before or not later than 10 days after taking a disciplinary action described in subparagraph (A)—

"(i) if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension described in subparagraph (A), the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or

"(ii) if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior.

"(2) Authority of hearing officer.—A hearing officer under this section may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer—

"(A) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;

"(B) considers the appropriateness of the child's current placement;

"(C) considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

"(D) determines that the interim alternative educational setting meets the requirements of paragraph (3)(B).

"(3) Determination of setting.—

"(A) In general.—The alternative educational setting described in paragraph (1)(A)(ii) shall be determined by the IEP Team.

"(B) Additional requirements.—Any interim alternative educational setting in which a child is placed under paragraph (1) or (2) shall—

"(i) be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

"(ii) include services and modifications designed to address the behavior described in paragraph (1) or paragraph (2) so that it does not recur.

"(4) Manifestation determination review.—

"(A) In general.—If a disciplinary action is contemplated as described in paragraph (1) or paragraph (2) for a behavior of a child with a disability described in either of those paragraphs, or if a disciplinary action involving a change of placement for more than 10 days is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the local educational agency that applies to all children—

"(i) not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under this section; and

"(ii) immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

"(B) Individuals to carry out review.—A review described in subparagraph (A) shall be conducted by the IEP Team and other qualified personnel.

"(C) Conduct of review.—In carrying out a review described in subparagraph (A), the IEP Team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team—

"(i) first considers, in terms of the behavior subject to disciplinary action, all relevant information, including—

"(I) evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child;

"(II) observations of the child; and

"(III) the child's IEP and placement; and

"(ii) then determines that—

"(I) in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

"(II) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

"(III) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

"(5) Determination that behavior was not manifestation of disability.—

"(A) In general.—If the result of the review described in paragraph (4) is a determination, consistent with paragraph (4)(C), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in section 612(a)(1).

"(B) Additional requirement.—If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

"(6) Parent appeal.—

"(A) In general.—

"(i) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.

"(ii) The State or local educational agency shall arrange for an expedited hearing in any case described in this subsection when requested by a parent.

"(B) REVIEW OF DECISION.—

"(i) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of such child's disability consistent with the requirements of paragraph (4)(C).

"(ii) In reviewing a decision under paragraph (1)(A)(ii) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards set out in paragraph (2).

"(7) PLACEMENT DURING APPEALS.—

"(A) IN GENERAL.—When a parent requests a hearing regarding a disciplinary action described in paragraph (1)(A)(ii) or paragraph (2) to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(A)(ii) or paragraph (2), whichever occurs first, unless the parent and the State or local educational agency agree otherwise.

"(B) CURRENT PLACEMENT.—If a child is placed in an interim alternative educational setting pursuant to paragraph (1)(A)(ii) or paragraph (2) and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in subparagraph (C).

"(C) EXPEDITED HEARING.—

"(i) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the local educational agency may request an expedited hearing.

"(ii) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards set out in paragraph (2).

"(8) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.—

"(A) IN GENERAL.—A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in paragraph (1), may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

"(B) BASIS OF KNOWLEDGE.—A local educational agency shall be deemed to have knowledge that a child is a child with a disability if—

"(i) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services;

"(ii) the behavior or performance of the child demonstrates the need for such services;

"(iii) the parent of the child has requested an evaluation of the child pursuant to section 614; or

"(iv) the teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of such agency or to other personnel of the agency.

"(C) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.—

"(i) In general.—If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B)) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

"(ii) Limitations.—If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1) or (2), the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

"(9) Referral to and action by law enforcement and judicial authorities.—

"(A) Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

"(B) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

"(10) Definitions.—For purposes of this subsection, the following definitions apply:

"(A) Controlled substance.—The term 'controlled substance' means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

"(B) Illegal drug.—The term 'illegal drug'—

"(i) means a controlled substance; but

"(ii) does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

"(C) Substantial evidence.—The term 'substantial evidence' means beyond a preponderance of the evidence.

"(D) Weapon.—The term 'weapon' has the meaning given the term 'dangerous weapon' under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

"(l) Rule of Construction.—Nothing in this part shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

"(m) Transfer of Parental Rights at Age of Majority.—

"(1) In general.—A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

"(A) the public agency shall provide any notice required by this section to both the individual and the parents;

"(B) all other rights accorded to parents under this part transfer to the child;

"(C) the agency shall notify the individual and the parents of the transfer of rights; and

"(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

"(2) Special rule.—If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

"SEC. 616. WITHHOLDING AND JUDICIAL REVIEW.

"(a) WITHHOLDING OF PAYMENTS.—

"(1) IN GENERAL.—Whenever the Secretary, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or State agency affected by any failure described in subparagraph (B)), finds—

"(A) that there has been a failure by the State to comply substantially with any provision of this part; or

"(B) that there is a failure to comply with any condition of a local educational agency's or State agency's eligibility under this part, including the terms of any agreement to achieve compliance with this part within the timelines specified in the agreement;

the Secretary shall, after notifying the State educational agency, withhold, in whole or in part, any further payments to the State under this part, or refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

"(2) NATURE OF WITHHOLDING.—If the Secretary withholds further payments under paragraph (1), the Secretary may determine that such withholding will be limited to programs or projects, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or State agencies affected by the failure. Until the Secretary is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in subparagraph (A) or (B) of paragraph (1), payments to the State under this part shall be withheld in whole or in part, or payments by the State educational agency under this part shall be limited to local educational agencies and State agencies whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, State agency, or local educational agency that has received notice under paragraph (1) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

"(b) JUDICIAL REVIEW.—

"(1) IN GENERAL.—If any State is dissatisfied with the Secretary's final action with respect to the eligibility of the State under section 612, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

"(2) JURISDICTION; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"(3) STANDARD OF REVIEW.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(c) DIVIDED STATE AGENCY RESPONSIBILITY.—For purposes of this section, where responsibility for ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the State educational agency pursuant to section 612(a)(11)(C), the Secretary, in instances where the Secretary finds that the failure to comply substantially with the provisions of this part are related to a failure by the public agency, shall take appropriate corrective action to ensure compliance with this part, except—

"(1) any reduction or withholding of payments to the State is proportionate to the total funds allotted under section 611 to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

"(2) any withholding of funds under paragraph (1) shall be limited to the specific agency responsible for the failure to comply with this part.

"SEC. 617. ADMINISTRATION.

"(a) RESPONSIBILITIES OF SECRETARY.—In carrying out this part, the Secretary shall—

"(1) cooperate with, and (directly or by grant or contract) furnish technical assistance necessary to, the State in matters relating to—

"(A) the education of children with disabilities; and

"(B) carrying out this part; and

"(2) provide short-term training programs and institutes.

"(b) RULES AND REGULATIONS.—In carrying out the provisions of this part, the Secretary shall issue regulations under this Act only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this Act.

"(c) CONFIDENTIALITY.—The Secretary shall take appropriate action, in accordance with the provisions of section 444 of the General Education Provisions Act (20 U.S.C. 1232g), to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant to the provisions of this part.

"(d) PERSONNEL.—The Secretary is authorized to hire qualified personnel necessary to carry out the Secretary's duties under subsection (a) and under sections 618, 661 and 673 (or their predecessor authorities through October 1, 1997) without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, except that no more than twenty such personnel shall be employed at any time.

"SEC. 618. PROGRAM INFORMATION.

"(a) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year to the Secretary—

"(1)(A) on—

"(i) the number of children with disabilities, by race, ethnicity, and disability category, who are receiving a free appropriate public education;

"(ii) the number of children with disabilities, by race and ethnicity, who are receiving early intervention services;

"(iii) the number of children with disabilities, by race, ethnicity, and disability category, who are participating in regular education;

"(iv) the number of children with disabilities, by race, ethnicity, and disability category, who are in separate classes, separate schools or facilities, or public or private residential facilities;

"(v) the number of children with disabilities, by race, ethnicity, and disability category, who, for each year of age from age 14 to 21, stopped receiving special education and related services because of program completion or other reasons and the reasons why those children stopped receiving special education and related services;

"(vi) the number of children with disabilities, by race and ethnicity, who, from birth through age two, stopped receiving early intervention services because of program completion or for other reasons; and

"(vii)(I) the number of children with disabilities, by race, ethnicity, and disability category, who under subparagraphs (A)(ii) and (B) of section 615(k)(1), are removed to an interim alternative educational setting;

"(II) the acts or items precipitating those removals; and

"(III) the number of children with disabilities who are subject to long-term suspensions or expulsions; and

"(B) on the number of infants and toddlers, by race and ethnicity, who are at risk of having substantial developmental delays (as described in section 632), and who are receiving early intervention services under part C; and

"(2) on any other information that may be required by the Secretary.

"(b) SAMPLING.—The Secretary may permit States and the Secretary of the Interior to obtain the data described in subsection (a) through sampling.

"(c) DISPROPORTIONALITY.—

"(1) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the State with respect to—

"(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3); and

"(B) the placement in particular educational settings of such children.

"(2) REVIEW AND REVISION OF POLICIES, PRACTICES, AND PROCEDURES.—In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this Act.

"SEC. 619. PRESCHOOL GRANTS.

"(a) IN GENERAL.—The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this part—

"(1) to children with disabilities aged 3 to 5, inclusive; and

"(2) at the State's discretion, to 2-year-old children with disabilities who will turn 3 during the school year.

"(b) ELIGIBILITY.—A State shall be eligible for a grant under this section if such State—

"(1) is eligible under section 612 to receive a grant under this part; and

"(2) makes a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in the State.

"(c) ALLOCATIONS TO STATES.—

"(1) IN GENERAL.—After reserving funds for studies and evaluations under section 674(e), the Secretary shall allocate the remaining amount among the States in accordance with paragraph (2) or (3), as the case may be.

"(2) INCREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) is equal to or greater than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

"(A)(i) Except as provided in subparagraph (B), the Secretary shall—

"(I) allocate to each State the amount it received for fiscal year 1997;

"(II) allocate 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 5; and

"(III) allocate 15 percent of those remaining funds to States on the basis of their relative populations of all children aged 3 through 5 who are living in poverty.

"(ii) For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

"(B) Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

"(i) No State's allocation shall be less than its allocation for the preceding fiscal year.

"(ii) No State's allocation shall be less than the greatest of—

"(I) the sum of—

"(aa) the amount it received for fiscal year 1997; and

"(bb) one third of one percent of the amount by which the amount appropriated under subsection (j) exceeds the amount appropriated under this section for fiscal year 1997;

"(II) the sum of—

"(aa) the amount it received for the preceding fiscal year; and

"(bb) that amount multiplied by the percentage by which the increase in the funds appropriated from the preceding fiscal year exceeds 1.5 percent; or

"(III) the sum of—

"(aa) the amount it received for the preceding fiscal year; and

"(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated from the preceding fiscal year.

"(iii) Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of—

"(I) the amount it received for the preceding fiscal year; and

"(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated.

"(C) If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

"(3) DECREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

"(A) If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State shall be allocated the sum of—

"(i) the amount it received for fiscal year 1997; and

"(ii) an amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.

"(B) If the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State shall be allocated the amount it received for that year, ratably reduced, if necessary.

"(4) OUTLYING AREAS.—The Secretary shall increase the fiscal year 1998 allotment of each outlying area under section 611 by at least the amount that that area received under this section for fiscal year 1997.

"(d) RESERVATION FOR STATE ACTIVITIES.—

"(1) IN GENERAL.—Each State may retain not more than the amount described in paragraph (2) for administration and other State-level activities in accordance with subsections (e) and (f).

"(2) AMOUNT DESCRIBED.—For each fiscal year, the Secretary shall determine and report to the State educational agency an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

"(A) the percentage increase, if any, from the preceding fiscal year in the State's allocation under this section; or

"(B) the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

"(e) STATE ADMINISTRATION.—

"(1) IN GENERAL.—For the purpose of administering this section (including the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities) a State may use not more than 20 percent of the maximum amount it may retain under subsection (d) for any fiscal year.

"(2) ADMINISTRATION OF PART C.—Funds described in paragraph (1) may also be used for the administration of part C of this Act, if the State educational agency is the lead agency for the State under that part.

"(f) OTHER STATE-LEVEL ACTIVITIES.—Each State shall use any funds it retains under subsection (d) and does not use for administration under subsection (e)—

"(1) for support services (including establishing and implementing the mediation process required by section 615(e)), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5;

"(2) for direct services for children eligible for services under this section;

"(3) to develop a State improvement plan under subpart 1 of part D;

"(4) for activities at the State and local levels to meet the performance goals established by the State under section 612(a)(16) and to support implementation of the State improvement plan under subpart 1 of part D if the State receives funds under that subpart; or

"(5) to supplement other funds used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under this section for a fiscal year.

"(g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

"(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute any of the grant funds that it does not reserve under subsection (d) to local educational agencies in the State that have established their eligibility under section 613, as follows:

"(A) BASE PAYMENTS.—The State shall first award each agency described in paragraph (1) the amount that agency would have received under this section for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as then in effect.

"(B) ALLOCATION OF REMAINING FUNDS.—After making allocations under subparagraph (A), the State shall—

"(i) allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction; and

"(ii) allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

"(2) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities aged three through five residing in the area served by that agency with State and local funds, the State educational agency may reallocate any portion of the funds under this section that are not needed by that local agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged three through five residing in the areas they serve.

"(h) PART C INAPPLICABLE.—Part C of this Act does not apply to any child with a disability receiving a free appropriate public education, in accordance with this part, with funds received under this section.

"(i) DEFINITION.—For the purpose of this section, the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

"(j) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated to the Secretary $500,000,000 for fiscal year 1998 and such sums as may be necessary for each subsequent fiscal year.

"PART C—INFANTS AND TODDLERS WITH DISABILITIES

"SEC. 631. FINDINGS AND POLICY.

"(a) FINDINGS.—The Congress finds that there is an urgent and substantial need—

"(1) to enhance the development of infants and toddlers with disabilities and to minimize their potential for developmental delay;

"(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

"(3) to minimize the likelihood of institutionalization of individuals with disabilities and maximize the potential for their independently living in society;

"(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and

"(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of historically underrepresented populations, particularly minority, low-income, inner-city, and rural populations.

"(b) POLICY.—It is therefore the policy of the United States to provide financial assistance to States—

"(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;

"(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

"(3) to enhance their capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

"(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

"SEC. 632. DEFINITIONS.

"As used in this part:

"(1) AT-RISK INFANT OR TODDLER.—The term 'at-risk infant or toddler' means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

"(2) Council.—The term 'council' means a State interagency coordinating council established under section 641.

"(3) Developmental delay.—The term 'developmental delay', when used with respect to an individual residing in a State, has the meaning given such term by the State under section 635(a)(1).

"(4) Early intervention services.—The term 'early intervention services' means developmental services that—

"(A) are provided under public supervision;

"(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

"(C) are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas—

"(i) physical development;

"(ii) cognitive development;

"(iii) communication development;

"(iv) social or emotional development; or

"(v) adaptive development;

"(D) meet the standards of the State in which they are provided, including the requirements of this part;

"(E) include—

"(i) family training, counseling, and home visits;

"(ii) special instruction;

"(iii) speech-language pathology and audiology services;

"(iv) occupational therapy;

"(v) physical therapy;

"(vi) psychological services;

"(vii) service coordination services;

"(viii) medical services only for diagnostic or evaluation purposes;

"(ix) early identification, screening, and assessment services;

"(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;

"(xi) social work services;

"(xii) vision services;

"(xiii) assistive technology devices and assistive technology services; and

"(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;

"(F) are provided by qualified personnel, including—

"(i) special educators;

"(ii) speech-language pathologists and audiologists;

"(iii) occupational therapists;

"(iv) physical therapists;

"(v) psychologists;

"(vi) social workers;

"(vii) nurses;

"(viii) nutritionists;

"(ix) family therapists;

"(x) orientation and mobility specialists; and

"(xi) pediatricians and other physicians;

"(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and

"(H) are provided in conformity with an individualized family service plan adopted in accordance with section 636.

"(5) Infant or toddler with a disability.—The term 'infant or toddler with a disability'—

"(A) means an individual under 3 years of age who needs early intervention services because the individual—

"(i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

"(ii) has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; and

"(B) may also include, at a State's discretion, at-risk infants and toddlers.

"SEC. 633. GENERAL AUTHORITY.

"The Secretary shall, in accordance with this part, make grants to States (from their allocations under section 643) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

"SEC. 634. ELIGIBILITY.

"In order to be eligible for a grant under section 633, a State shall demonstrate to the Secretary that the State—

"(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; and

"(2) has in effect a statewide system that meets the requirements of section 635.

"SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.

"(a) IN GENERAL.—A statewide system described in section 633 shall include, at a minimum, the following components:

"(1) A definition of the term 'developmental delay' that will be used by the State in carrying out programs under this part.

"(2) A State policy that is in effect and that ensures that appropriate early intervention services are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers and their families residing on a reservation geographically located in the State.

"(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to appropriately assist in the development of the infant or toddler.

"(4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 636, including service coordination services in accordance with such service plan.

"(5) A comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources.

"(6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information for parents on the availability of early intervention services, and procedures for determining the extent to which such sources disseminate such information to parents of infants and toddlers.

"(7) A central directory which includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.

"(8) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources respecting the basic components of early intervention services available in the State, that is consistent with the comprehensive system of personnel development described in section 612(a)(14) and may include—

"(A) implementing innovative strategies and activities for the recruitment and retention of early education service providers;

"(B) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part;

"(C) training personnel to work in rural and inner-city areas; and

"(D) training personnel to coordinate transition services for infants and toddlers served under this part from an early intervention program under this part to preschool or other appropriate services.

"(9) Subject to subsection (b), policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including—

"(A) the establishment and maintenance of standards which are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing early intervention services; and

"(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State;

except that nothing in this part, including this paragraph, prohibits the use of paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, to assist in the provision of early intervention services to infants and toddlers with disabilities under this part.

"(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—

"(A) the general administration and supervision of programs and activities receiving assistance under section 633, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 633, to ensure that the State complies with this part;

"(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;

"(C) the assignment of financial responsibility in accordance with section 637(a)(2) to the appropriate agencies;

"(D) the development of procedures to ensure that services are provided to infants and toddlers and their families under this part in a timely manner pending the resolution of any disputes among public agencies or service providers;

"(E) the resolution of intra- and interagency disputes; and

"(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

"(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements.

"(12) A procedure for securing timely reimbursements of funds used under this part in accordance with section 640(a).

"(13) Procedural safeguards with respect to programs under this part, as required by section 639.

"(14) A system for compiling data requested by the Secretary under section 618 that relates to this part.

"(15) A State interagency coordinating council that meets the requirements of section 641.

"(16) Policies and procedures to ensure that, consistent with section 636(d)(5)—

"(A) to the maximum extent appropriate, early intervention services are provided in natural environments; and

"(B) the provision of early intervention services for any infant or toddler occurs in a setting other than a natural environment only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

"(b) POLICY.—In implementing subsection (a)(9), a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subsection (a)(9) within 3 years.

"SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.

"(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—A statewide system described in section 633 shall provide, at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive—

"(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;

"(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and

"(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e).

"(b) PERIODIC REVIEW.—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

"(c) PROMPTNESS AFTER ASSESSMENT.—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.

"(d) CONTENT OF PLAN.—The individualized family service plan shall be in writing and contain—

"(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

"(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

"(3) a statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary;

"(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;

"(5) a statement of the natural environments in which early intervention services shall appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

"(6) the projected dates for initiation of services and the anticipated duration of the services;

"(7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons; and

"(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

"(e) PARENTAL CONSENT.—The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then the early intervention services to which consent is obtained shall be provided.

"SEC. 637. STATE APPLICATION AND ASSURANCES.

"(a) APPLICATION.—A State desiring to receive a grant under section 633 shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain—

"(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 633;

"(2) a designation of an individual or entity responsible for assigning financial responsibility among appropriate agencies;

"(3) information demonstrating eligibility of the State under section 634, including—

"(A) information demonstrating to the Secretary's satisfaction that the State has in effect the statewide system required by section 633; and

"(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;

"(4) if the State provides services to at-risk infants and toddlers through the system, a description of such services;

"(5) a description of the uses for which funds will be expended in accordance with this part;

"(6) a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State;

"(7) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

"(8) a description of the policies and procedures to be used—

"(A) to ensure a smooth transition for toddlers receiving early intervention services under this part to preschool or other appropriate services, including a description of how—

"(i) the families of such toddlers will be included in the transition plans required by subparagraph (C); and

"(ii) the lead agency designated or established under section 636(a)(10) will—

"(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under part B, as determined in accordance with State law;

"(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency at least 90 days (and at the discretion of all such parties, up to 6 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

"(III) in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under part B, to discuss the appropriate services that the child may receive;

"(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and

"(C) to establish a transition plan; and

"(9) such other information and assurances as the Secretary may reasonably require.

"(b) ASSURANCES.—The application described in subsection (a)—

"(1) shall provide satisfactory assurance that Federal funds made available under section 643 to the State will be expended in accordance with this part;

"(2) shall contain an assurance that the State will comply with the requirements of section 640;

"(3) shall provide satisfactory assurance that the control of funds provided under section 643, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property;

"(4) shall provide for—

"(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part; and

"(B) keeping such records and affording such access to them as the Secretary may find necessary to ensure the correctness and verification of those reports and proper disbursement of Federal funds under this part;

"(5) provide satisfactory assurance that Federal funds made available under section 643 to the State—

"(A) will not be commingled with State funds; and

"(B) will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;

"(6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under section 643 to the State;

"(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, and rural families, in the planning and implementation of all the requirements of this part; and

"(8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.

"(c) STANDARD FOR DISAPPROVAL OF APPLICATION.—The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

"(d) Subsequent State Application.—If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under part H (as in effect before July 1, 1998), the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this part.

"(e) Modification of Application.—An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

"(f) Modifications Required by the Secretary.—The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure the State's compliance with this part, if—

"(1) an amendment is made to this Act, or a Federal regulation issued under this Act;

"(2) a new interpretation of this Act is made by a Federal court or the State's highest court; or

"(3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.

"SEC. 638. USES OF FUNDS.

"In addition to using funds provided under section 633 to maintain and implement the statewide system required by such section, a State may use such funds—

"(1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this part that are not otherwise funded through other public or private sources;

"(2) to expand and improve on services for infants and toddlers and their families under this part that are otherwise available;

"(3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year; and

"(4) in any State that does not provide services for at-risk infants and toddlers under section 637(a)(4), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purposes of—

"(A) identifying and evaluating at-risk infants and toddlers;

"(B) making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and

"(C) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

"SEC. 639. PROCEDURAL SAFEGUARDS.

"(a) Minimum Procedures.—The procedural safeguards required to be included in a statewide system under section 635(a)(13) shall provide, at a minimum, the following:

"(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

"(2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

"(3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.

"(4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

“(5) Procedures to protect the rights of the infant or toddler whenever the parents of the child are not known or cannot be found or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.

“(6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.

“(7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

“(8) The right of parents to use mediation in accordance with section 615(e), except that—

“(A) any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

“(B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be; and

“(C) any reference in the section to the provision of free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

“(b) SERVICES DURING PENDENCY OF PROCEEDINGS.—During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

“SEC. 640. PAYOR OF LAST RESORT.

“(a) NONSUBSTITUTION.—Funds provided under section 643 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 643 may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.

“(b) REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to medicaid for infants or toddlers with disabilities) within the State.

“SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—A State that desires to receive financial assistance under this part shall establish a State interagency coordinating council.

“(2) APPOINTMENT.—The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.

“(3) CHAIRPERSON.—The Governor shall designate a member of the council to serve as the chairperson of the council, or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency designated under section 635(a)(10) may not serve as the chairperson of the council.

“(b) COMPOSITION.—

“(1) IN GENERAL.—The council shall be composed as follows:

“(A) PARENTS.—At least 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

"(B) SERVICE PROVIDERS.—At least 20 percent of the members shall be public or private providers of early intervention services.

"(C) STATE LEGISLATURE.—At least one member shall be from the State legislature.

"(D) PERSONNEL PREPARATION.—At least one member shall be involved in personnel preparation.

"(E) AGENCY FOR EARLY INTERVENTION SERVICES.—At least one member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

"(F) AGENCY FOR PRESCHOOL SERVICES.—At least one member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.

"(G) AGENCY FOR HEALTH INSURANCE.—At least one member shall be from the agency responsible for the State governance of health insurance.

"(H) HEAD START AGENCY.—A representative from a Head Start agency or program in the State.

"(I) CHILD CARE AGENCY.—A representative from a State agency responsible for child care.

"(2) OTHER MEMBERS.—The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs, or where there is no BIA-operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council.

"(c) MEETINGS.—The council shall meet at least quarterly and in such places as it deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

"(d) MANAGEMENT AUTHORITY.—Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

"(e) FUNCTIONS OF COUNCIL.—

"(1) DUTIES.—The council shall—

"(A) advise and assist the lead agency designated or established under section 635(a)(10) in the performance of the responsibilities set forth in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;

"(B) advise and assist the lead agency in the preparation of applications and amendments thereto;

"(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and

"(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

"(2) AUTHORIZED ACTIVITY.—The council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.

"(f) CONFLICT OF INTEREST.—No member of the council shall cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

"SEC. 642. FEDERAL ADMINISTRATION.

"Sections 616, 617, and 618 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—

"(1) any reference in such sections to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

"(2) any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to an early intervention service provider under this part; and

"(3) any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

"SEC. 643. ALLOCATION OF FUNDS.

"(a) RESERVATION OF FUNDS FOR OUTLYING AREAS.—

"(1) IN GENERAL.—From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve up to one percent for payments to Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs.

"(2) CONSOLIDATION OF FUNDS.—The provisions of Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this part.

"(b) PAYMENTS TO INDIANS.—

"(1) IN GENERAL.—The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year.

"(2) ALLOCATION.—For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total of such children served by all tribes, tribal organizations, or consortia.

"(3) INFORMATION.—To receive a payment under this paragraph, the tribe, tribal organization, or consortium shall submit such information to the Secretary of the Interior as is needed to determine the amounts to be allocated under paragraph (2).

"(4) USE OF FUNDS.—The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child-find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. Such activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

"(5) REPORTS.—To be eligible to receive a grant under paragraph (2), a tribe, tribal organization, or consortium shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 611(i)(3)(E). The Secretary of Education may require any additional information from the Secretary of the Interior.

"(6) PROHIBITED USES OF FUNDS.—None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

"(c) STATE ALLOTMENTS.—

"(1) In general.—Except as provided in paragraphs (2), (3), and (4), from the funds remaining for each fiscal year after the reservation and payments under subsections (a) and (b), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

"(2) Minimum allotments.—Except as provided in paragraphs (3) and (4), no State shall receive an amount under this section for any fiscal year that is less than the greatest of—

"(A) one-half of one percent of the remaining amount described in paragraph (1); or

"(B) $500,000.

"(3) Special rule for 1998 and 1999.—

"(A) In general.—Except as provided in paragraph (4), no State may receive an amount under this section for either fiscal year 1998 or 1999 that is less than the sum of the amounts such State received for fiscal year 1994 under—

"(i) part H (as in effect for such fiscal year); and

"(ii) subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as in effect on the day before the date of the enactment of the Improving America's Schools Act of 1994) for children with disabilities under 3 years of age.

"(B) Exception.—If, for fiscal year 1998 or 1999, the number of infants and toddlers in a State, as determined under paragraph (1), is less than the number of infants and toddlers so determined for fiscal year 1994, the amount determined under subparagraph (A) for the State shall be reduced by the same percentage by which the number of such infants and toddlers so declined.

"(4) Ratable reduction.—

"(A) In general.—If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allocations to such States for such year.

"(B) Additional funds.—If additional funds become available for making payments under this subsection for a fiscal year, allocations that were reduced under subparagraph (A) shall be increased on the same basis they were reduced.

"(5) Definitions.—For the purpose of this subsection—

"(A) the terms 'infants' and 'toddlers' mean children under 3 years of age; and

"(B) the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

"(d) Reallotment of Funds.—If a State elects not to receive its allotment under subsection (c), the Secretary shall reallot, among the remaining States, amounts from such State in accordance with such subsection.

"SEC. 644. FEDERAL INTERAGENCY COORDINATING COUNCIL.

"(a) Establishment and Purpose.—

"(1) In general.—The Secretary shall establish a Federal Interagency Coordinating Council in order to—

"(A) minimize duplication of programs and activities across Federal, State, and local agencies, relating to—

"(i) early intervention services for infants and toddlers with disabilities (including at-risk infants and toddlers) and their families; and

"(ii) preschool or other appropriate services for children with disabilities;

"(B) ensure the effective coordination of Federal early intervention and preschool programs and policies across Federal agencies;

"(C) coordinate the provision of Federal technical assistance and support activities to States;

"(D) identify gaps in Federal agency programs and services; and

"(E) identify barriers to Federal interagency cooperation.

"(2) Appointments.—The council established under paragraph (1) (hereafter in this section referred to as the "Council") and the chairperson of the Council shall be appointed by the Secretary in consultation with other appropriate Federal agencies. In making the appointments, the Secretary shall ensure that each member has sufficient authority to engage in policy planning and implementation on behalf of the department, agency, or program that the member represents.

"(b) COMPOSITION.—The Council shall be composed of—

"(1) a representative of the Office of Special Education Programs;

"(2) a representative of the National Institute on Disability and Rehabilitation Research and a representative of the Office of Educational Research and Improvement;

"(3) a representative of the Maternal and Child Health Services Block Grant Program;

"(4) a representative of programs administered under the Developmental Disabilities Assistance and Bill of Rights Act;

"(5) a representative of the Health Care Financing Administration;

"(6) a representative of the Division of Birth Defects and Developmental Disabilities of the Centers for Disease Control;

"(7) a representative of the Social Security Administration;

"(8) a representative of the special supplemental nutrition program for women, infants, and children of the Department of Agriculture;

"(9) a representative of the National Institute of Mental Health;

"(10) a representative of the National Institute of Child Health and Human Development;

"(11) a representative of the Bureau of Indian Affairs of the Department of the Interior;

"(12) a representative of the Indian Health Service;

"(13) a representative of the Surgeon General;

"(14) a representative of the Department of Defense;

"(15) a representative of the Children's Bureau, and a representative of the Head Start Bureau, of the Administration for Children and Families;

"(16) a representative of the Substance Abuse and Mental Health Services Administration;

"(17) a representative of the Pediatric AIDS Health Care Demonstration Program in the Public Health Service;

"(18) parents of children with disabilities age 12 or under (who shall constitute at least 20 percent of the members of the Council), of whom at least one must have a child with a disability under the age of 6;

"(19) at least 2 representatives of State lead agencies for early intervention services to infants and toddlers, one of whom must be a representative of a State educational agency and the other a representative of a non-educational agency;

"(20) other members representing appropriate agencies involved in the provision of, or payment for, early intervention services and special education and related services to infants and toddlers with disabilities and their families and preschool children with disabilities; and

"(21) other persons appointed by the Secretary.

"(c) MEETINGS.—The Council shall meet at least quarterly and in such places as the Council deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

"(d) FUNCTIONS OF THE COUNCIL.—The Council shall—

"(1) advise and assist the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, and the Commissioner of Social Security in the performance of their responsibilities related to serving children from birth through age 5 who are eligible for services under this part or under part B;

"(2) conduct policy analyses of Federal programs related to the provision of early intervention services and special educational and related services to infants and toddlers with disabilities and their families, and preschool children with disabilities, in order to determine areas of conflict, overlap, duplication, or inappropriate omission;

"(3) identify strategies to address issues described in paragraph (2);

"(4) develop and recommend joint policy memoranda concerning effective interagency collaboration, including modifications to regulations, and the elimination of barriers to interagency programs and activities;

"(5) coordinate technical assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention programming for infants and toddlers with disabilities and their families and preschool children with disabilities; and

"(6) facilitate activities in support of States' interagency coordination efforts.

"(e) CONFLICT OF INTEREST.—No member of the Council shall cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under Federal law.

"(f) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the establishment or operation of the Council.

"SEC. 645. AUTHORIZATION OF APPROPRIATIONS.

"For the purpose of carrying out this part, there are authorized to be appropriated $400,000,000 for fiscal year 1998 and such sums as may be necessary for each of the fiscal years 1999 through 2002.

"PART D—NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH DISABILITIES

"Subpart 1—State Program Improvement Grants for Children with Disabilities

"SEC. 651. FINDINGS AND PURPOSE.

"(a) FINDINGS.—The Congress finds the following:

"(1) States are responding with some success to multiple pressures to improve educational and transitional services and results for children with disabilities in response to growing demands imposed by ever-changing factors, such as demographics, social policies, and labor and economic markets.

"(2) In order for States to address such demands and to facilitate lasting systemic change that is of benefit to all students, including children with disabilities, States must involve local educational agencies, parents, individuals with disabilities and their families, teachers and other service providers, and other interested individuals and organizations in carrying out comprehensive strategies to improve educational results for children with disabilities.

"(3) Targeted Federal financial resources are needed to assist States, working in partnership with others, to identify and make needed changes to address the needs of children with disabilities into the next century.

"(4) State educational agencies, in partnership with local educational agencies and other individuals and organizations, are in the best position to identify and design ways to meet emerging and expanding demands to improve education for children with disabilities and to address their special needs.

"(5) Research, demonstration, and practice over the past 20 years in special education and related disciplines have built a foundation of knowledge on which State and local systemic-change activities can now be based.

"(6) Such research, demonstration, and practice in special education and related disciplines have demonstrated that an effective educational system now and in the future must—

"(A) maintain high academic standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that students who are children with disabilities have maximum opportunities to achieve those standards and goals;

"(B) create a system that fully addresses the needs of all students, including children with disabilities, by addressing the needs of children with disabilities in carrying out educational reform activities;

"(C) clearly define, in measurable terms, the school and post-school results that children with disabilities are expected to achieve;

"(D) promote service integration, and the coordination of State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who require significant levels of support to maximize their participation and learning in school and the community;

"(E) ensure that children with disabilities are provided assistance and support in making transitions as described in section 674(b)(3)(C);

"(F) promote comprehensive programs of professional development to ensure that the persons responsible for the education or a transition of children with disabilities possess the skills and knowledge necessary to address the educational and related needs of those children;

"(G) disseminate to teachers and other personnel serving children with disabilities research-based knowledge about successful teaching practices and models and provide technical assistance to local educational agencies and schools on how to improve results for children with disabilities;

"(H) create school-based disciplinary strategies that will be used to reduce or eliminate the need to use suspension and expulsion as disciplinary options for children with disabilities;

"(I) establish placement-neutral funding formulas and cost-effective strategies for meeting the needs of children with disabilities; and

"(J) involve individuals with disabilities and parents of children with disabilities in planning, implementing, and evaluating systemic-change activities and educational reforms.

"(b) PURPOSE.—The purpose of this subpart is to assist State educational agencies, and their partners referred to in section 652(b), in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

"SEC. 652. ELIGIBILITY AND COLLABORATIVE PROCESS.

"(a) ELIGIBLE APPLICANTS.—A State educational agency may apply for a grant under this subpart for a grant period of not less than 1 year and not more than 5 years.

"(b) PARTNERS.—

"(1) REQUIRED PARTNERS.—

"(A) CONTRACTUAL PARTNERS.—In order to be considered for a grant under this subpart, a State educational agency shall establish a partnership with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities.

"(B) OTHER PARTNERS.—In order to be considered for a grant under this subpart, a State educational agency shall work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including—

"(i) the Governor;

"(ii) parents of children with disabilities;

"(iii) parents of nondisabled children;

"(iv) individuals with disabilities;

"(v) organizations representing individuals with disabilities and their parents, such as parent training and information centers;

"(vi) community-based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

"(vii) the lead State agency for part C;

"(viii) general and special education teachers, and early intervention personnel;

"(ix) the State advisory panel established under part C;

"(x) the State interagency coordinating council established under part C; and

"(xi) institutions of higher education within the State.

"(2) OPTIONAL PARTNERS.—A partnership under subparagraph (A) or (B) of paragraph (1) may also include—

"(A) individuals knowledgeable about vocational education;

"(B) the State agency for higher education;

"(C) the State vocational rehabilitation agency;

"(D) public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice; and

"(E) other individuals.

"SEC. 653. APPLICATIONS.

"(a) IN GENERAL.—

"(1) SUBMISSION.—A State educational agency that desires to receive a grant under this subpart shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.

"(2) STATE IMPROVEMENT PLAN.—The application shall include a State improvement plan that—

"(A) is integrated, to the maximum extent possible, with State plans under the Elementary and Secondary Education Act of 1965 and the Rehabilitation Act of 1973, as appropriate; and

"(B) meets the requirements of this section.

"(b) DETERMINING CHILD AND PROGRAM NEEDS.—

"(1) IN GENERAL.—Each State improvement plan shall identify those critical aspects of early intervention, general education, and special education programs (including professional development, based on an assessment of State and local needs) that must be improved to enable children with disabilities to meet the goals established by the State under section 612(a)(16).

"(2) REQUIRED ANALYSES.—To meet the requirement of paragraph (1), the State improvement plan shall include at least—

"(A) an analysis of all information, reasonably available to the State educational agency, on the performance of children with disabilities in the State, including—

"(i) their performance on State assessments and other performance indicators established for all children, including drop-out rates and graduation rates;

"(ii) their participation in postsecondary education and employment; and

"(iii) how their performance on the assessments and indicators described in clause (i) compares to that of non-disabled children;

"(B) an analysis of State and local needs for professional development for personnel to serve children with disabilities that includes, at a minimum—

"(i) the number of personnel providing special education and related services; and

"(ii) relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals described in clause (i) with temporary certification), and on the extent of certification or retraining necessary to eliminate such shortages, that is based, to the maximum extent possible, on existing assessments of personnel needs;

"(C) an analysis of the major findings of the Secretary's most recent reviews of State compliance, as they relate to improving results for children with disabilities; and

"(D) an analysis of other information, reasonably available to the State, on the effectiveness of the State's systems of early intervention, special education, and general education in meeting the needs of children with disabilities.

"(c) IMPROVEMENT STRATEGIES.—Each State improvement plan shall—

"(1) describe a partnership agreement that—

"(A) specifies—

"(i) the nature and extent of the partnership among the State educational agency, local educational agencies, and other State agencies involved in, or concerned with, the education of children with disabilities, and the respective roles of each member of the partnership; and

"(ii) how such agencies will work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of these persons and organizations; and

"(B) is in effect for the period of the grant;

"(2) describe how grant funds will be used in undertaking the systemic-change activities, and the amount and nature of funds from any other sources, including part B funds retained for use at the State level under sections 611(f) and 619(d), that will be committed to the systemic-change activities;

"(3) describe the strategies the State will use to address the needs identified under subsection (b), including—

"(A) how the State will change State policies and procedures to address systemic barriers to improving results for children with disabilities;

"(B) how the State will hold local educational agencies and schools accountable for educational progress of children with disabilities;

"(C) how the State will provide technical assistance to local educational agencies and schools to improve results for children with disabilities;

"(D) how the State will address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of children with disabilities, including a description of how—

"(i) the State will prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities, including how the State will work with other States on common certification criteria;

"(ii) the State will prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities;

"(iii) the State will work with institutions of higher education and other entities that (on both a pre-service and an in-service basis) prepare personnel who work with children with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet State and local needs;

"(iv) the State will work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of such a program of preparation;

"(v) the State will work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel;

"(vi) the State will enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others;

"(vii) the State will acquire and disseminate, to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources, and how the State will, when appropriate, adopt promising practices, materials, and technology;

"(viii) the State will recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are underrepresented in the fields of regular education, special education, and related services;

"(ix) the plan is integrated, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other Federal and State laws that address personnel recruitment and training; and

"(x) the State will provide for the joint training of parents and special education, related services, and general education personnel;

"(E) strategies that will address systemic problems identified in Federal compliance reviews, including shortages of qualified personnel;

"(F) how the State will disseminate results of the local capacity-building and improvement projects funded under section 611(f)(4);

"(G) how the State will address improving results for children with disabilities in the geographic areas of greatest need; and

"(H) how the State will assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective; and

"(4) describe how the improvement strategies described in paragraph (3) will be coordinated with public and private sector resources.

"(d) COMPETITIVE AWARDS.—

"(1) IN GENERAL.—The Secretary shall make grants under this subpart on a competitive basis.

"(2) PRIORITY.—The Secretary may give priority to applications on the basis of need, as indicated by such information as the findings of Federal compliance reviews.

"(e) PEER REVIEW.—

"(1) IN GENERAL.—The Secretary shall use a panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications under this subpart.

"(2) COMPOSITION OF PANEL.—A majority of a panel described in paragraph (1) shall be composed of individuals who are not employees of the Federal Government.

"(3) PAYMENT OF FEES AND EXPENSES OF CERTAIN MEMBERS.—The Secretary may use available funds appropriated to carry out this subpart to pay the expenses and fees of panel members who are not employees of the Federal Government.

"(f) REPORTING PROCEDURES.—Each State educational agency that receives a grant under this subpart shall submit performance reports to the Secretary pursuant to a schedule to be determined by the Secretary, but not more frequently than annually. The reports shall describe the progress of the State in meeting the performance goals established under section 612(a)(16), analyze the effectiveness of the

State's strategies in meeting those goals, and identify any changes in the strategies needed to improve its performance.

"SEC. 654. USE OF FUNDS.

"(a) IN GENERAL.—

"(1) ACTIVITIES.—A State educational agency that receives a grant under this subpart may use the grant to carry out any activities that are described in the State's application and that are consistent with the purpose of this subpart.

"(2) CONTRACTS AND SUBGRANTS.—Each such State educational agency—

"(A) shall, consistent with its partnership agreement under section 652(b), award contracts or subgrants to local educational agencies, institutions of higher education, and parent training and information centers, as appropriate, to carry out its State improvement plan under this subpart; and

"(B) may award contracts and subgrants to other public and private entities, including the lead agency under part C, to carry out such plan.

"(b) USE OF FUNDS FOR PROFESSIONAL DEVELOPMENT.—A State educational agency that receives a grant under this subpart—

"(1) shall use not less than 75 percent of the funds it receives under the grant for any fiscal year—

"(A) to ensure that there are sufficient regular education, special education, and related services personnel who have the skills and knowledge necessary to meet the needs of children with disabilities and developmental goals of young children; or

"(B) to work with other States on common certification criteria; or

"(2) shall use not less than 50 percent of such funds for such purposes, if the State demonstrates to the Secretary's satisfaction that it has the personnel described in paragraph (1)(A).

"(c) GRANTS TO OUTLYING AREAS.—Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds received under this subpart.

"SEC. 655. MINIMUM STATE GRANT AMOUNTS.

"(a) IN GENERAL.—The Secretary shall make a grant to each State educational agency whose application the Secretary has selected for funding under this subpart in an amount for each fiscal year that is—

"(1) not less than $500,000, nor more than $2,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

"(2) not less than $80,000, in the case of an outlying area.

"(b) INFLATION ADJUSTMENT.—Beginning with fiscal year 1999, the Secretary may increase the maximum amount described in subsection (a)(1) to account for inflation.

"(c) FACTORS.—The Secretary shall set the amount of each grant under subsection (a) after considering—

"(1) the amount of funds available for making the grants;

"(2) the relative population of the State or outlying area; and

"(3) the types of activities proposed by the State or outlying area.

"SEC. 656. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 1998 through 2002.

"Subpart 2—Coordinated Research, Personnel Preparation, Technical Assistance, Support, and Dissemination of Information

"SEC. 661. ADMINISTRATIVE PROVISIONS.

"(a) COMPREHENSIVE PLAN.—

"(1) IN GENERAL.—The Secretary shall develop and implement a comprehensive plan for activities carried out under this subpart in order to enhance the provision of educational, related, transitional, and early intervention services to children with disabilities under parts B and C. The plan shall include mechanisms to address educational, related services, transitional, and early intervention needs identified by State educational agencies in applications submitted for State program improvement grants under subpart 1.

"(2) PARTICIPANTS IN PLAN DEVELOPMENT.—In developing the plan described in paragraph (1), the Secretary shall consult with—

"(A) individuals with disabilities;

"(B) parents of children with disabilities;

"(C) appropriate professionals; and

"(D) representatives of State and local educational agencies, private schools, institutions of higher education, other Federal agencies, the National Council on Disability, and national organizations with an interest in, and expertise in, providing services to children with disabilities and their families.

"(3) PUBLIC COMMENT.—The Secretary shall take public comment on the plan.

"(4) DISTRIBUTION OF FUNDS.—In implementing the plan, the Secretary shall, to the extent appropriate, ensure that funds are awarded to recipients under this subpart to carry out activities that benefit, directly or indirectly, children with disabilities of all ages.

"(5) REPORTS TO CONGRESS.—The Secretary shall periodically report to the Congress on the Secretary's activities under this subsection, including an initial report not later than the date that is 18 months after the date of the enactment of the Individuals with Disabilities Act Amendments of 1997.

"(b) ELIGIBLE APPLICANTS.—

"(1) IN GENERAL.—Except as otherwise provided in this subpart, the following entities are eligible to apply for a grant, contract, or cooperative agreement under this subpart:

"(A) A State educational agency.

"(B) A local educational agency.

"(C) An institution of higher education.

"(D) Any other public agency.

"(E) A private nonprofit organization.

"(F) An outlying area.

"(G) An Indian tribe or a tribal organization (as defined under section 4 of the Indian Self-Determination and Education Assistance Act).

"(H) A for-profit organization, if the Secretary finds it appropriate in light of the purposes of a particular competition for a grant, contract, or cooperative agreement under this subpart.

"(2) SPECIAL RULE.—The Secretary may limit the entities eligible for an award of a grant, contract, or cooperative agreement to one or more categories of eligible entities described in paragraph (1).

"(c) USE OF FUNDS BY SECRETARY.—Notwithstanding any other provision of law, and in addition to any authority granted the Secretary under chapter 1 or chapter 2, the Secretary may use up to 20 percent of the funds available under either chapter 1 or chapter 2 for any fiscal year to carry out any activity, or combination of activities, subject to such conditions as the Secretary determines are appropriate effectively to carry out the purposes of such chapters, that—

"(A) is consistent with the purposes of chapter 1, chapter 2, or both; and

"(B) involves—

"(i) research;

"(ii) personnel preparation;

"(iii) parent training and information;

"(iv) technical assistance and dissemination;

"(v) technology development, demonstration, and utilization; or

"(vi) media services.

"(d) SPECIAL POPULATIONS.—

"(1) APPLICATION REQUIREMENT.—In making an award of a grant, contract, or cooperative agreement under this subpart, the Secretary shall, as appropriate, require an applicant to demonstrate how the applicant will address the needs of children with disabilities from minority backgrounds.

"(2) OUTREACH AND TECHNICAL ASSISTANCE.—

"(A) REQUIREMENT.—Notwithstanding any other provision of this Act, the Secretary shall ensure that at least one percent of the total amount of funds appropriated to carry out this subpart is used for either or both of the following activities:

"(i) To provide outreach and technical assistance to Historically Black Colleges and Universities, and to institutions of higher education with minority enrollments of at least 25 percent, to promote the participation of such colleges, universities, and institutions in activities under this subpart.

"(ii) To enable Historically Black Colleges and Universities, and the institutions described in clause (i), to assist other colleges, universities, institutions, and agencies in improving educational and transitional results for children with disabilities.

"(B) Reservation of funds.—The Secretary may reserve funds appropriated under this subpart to satisfy the requirement of subparagraph (A).

"(e) Priorities.—

"(1) In general.—Except as otherwise explicitly authorized in this subpart, the Secretary shall ensure that a grant, contract, or cooperative agreement under chapter 1 or 2 is awarded only—

"(A) for activities that are designed to benefit children with disabilities, their families, or the personnel employed to work with such children or their families; or

"(B) to benefit other individuals with disabilities who such chapter is intended to benefit.

"(2) Priority for particular activities.—Subject to paragraph (1), the Secretary, in making an award of a grant, contract, or cooperative agreement under this subpart, may, without regard to the rule making procedures under section 553 of title 5, United States Code, limit competitions to, or otherwise give priority to—

"(A) projects that address one or more—

"(i) age ranges;

"(ii) disabilities;

"(iii) school grades;

"(iv) types of educational placements or early intervention environments;

"(v) types of services;

"(vi) content areas, such as reading; or

"(vii) effective strategies for helping children with disabilities learn appropriate behavior in the school and other community-based educational settings;

"(B) projects that address the needs of children based on the severity of their disability;

"(C) projects that address the needs of—

"(i) low-achieving students;

"(ii) underserved populations;

"(iii) children from low-income families;

"(iv) children with limited English proficiency;

"(v) unserved and underserved areas;

"(vi) particular types of geographic areas; or

"(vii) children whose behavior interferes with their learning and socialization;

"(D) projects to reduce inappropriate identification of children as children with disabilities, particularly among minority children;

"(E) projects that are carried out in particular areas of the country, to ensure broad geographic coverage; and

"(F) any activity that is expressly authorized in chapter 1 or 2.

"(f) Applicant and Recipient Responsibilities.—

"(1) Development and assessment of projects.—The Secretary shall require that an applicant for, and a recipient of, a grant, contract, or cooperative agreement for a project under this subpart—

"(A) involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the project; and

"(B) where appropriate, determine whether the project has any potential for replication and adoption by other entities.

"(2) Additional responsibilities.—The Secretary may require a recipient of a grant, contract, or cooperative agreement for a project under this subpart—

"(A) to share in the cost of the project;

"(B) to prepare the research and evaluation findings and products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities;

"(C) to disseminate such findings and products; and

"(D) to collaborate with other such recipients in carrying out subparagraphs (B) and (C).

"(g) Application Management.—

"(1) Standing panel.—

"(A) In general.—The Secretary shall establish and use a standing panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications under this subpart that, individually, request more than $75,000 per year in Federal financial assistance.

"(B) Membership.—The standing panel shall include, at a minimum—

"(i) individuals who are representatives of institutions of higher education that plan, develop, and carry out programs of personnel preparation;

"(ii) individuals who design and carry out programs of research targeted to the improvement of special education programs and services;

"(iii) individuals who have recognized experience and knowledge necessary to integrate and apply research findings to improve educational and transitional results for children with disabilities;

"(iv) individuals who administer programs at the State or local level in which children with disabilities participate;

"(v) individuals who prepare parents of children with disabilities to participate in making decisions about the education of their children;

"(vi) individuals who establish policies that affect the delivery of services to children with disabilities;

"(vii) individuals who are parents of children with disabilities who are benefiting, or have benefited, from coordinated research, personnel preparation, and technical assistance; and

"(viii) individuals with disabilities.

"(C) TRAINING.—The Secretary shall provide training to the individuals who are selected as members of the standing panel under this paragraph.

"(D) TERM.—No individual shall serve on the standing panel for more than 3 consecutive years, unless the Secretary determines that the individual's continued participation is necessary for the sound administration of this subpart.

"(2) PEER-REVIEW PANELS FOR PARTICULAR COMPETITIONS.—

"(A) COMPOSITION.—The Secretary shall ensure that each sub-panel selected from the standing panel that reviews applications under this subpart includes—

"(i) individuals with knowledge and expertise on the issues addressed by the activities authorized by the subpart; and

"(ii) to the extent practicable, parents of children with disabilities, individuals with disabilities, and persons from diverse backgrounds.

"(B) FEDERAL EMPLOYMENT LIMITATION.—A majority of the individuals on each sub-panel that reviews an application under this subpart shall be individuals who are not employees of the Federal Government.

"(3) USE OF DISCRETIONARY FUNDS FOR ADMINISTRATIVE PURPOSES.—

"(A) EXPENSES AND FEES OF NON-FEDERAL PANEL MEMBERS.—The Secretary may use funds available under this subpart to pay the expenses and fees of the panel members who are not officers or employees of the Federal Government.

"(B) ADMINISTRATIVE SUPPORT.—The Secretary may use not more than 1 percent of the funds appropriated to carry out this subpart to pay non-Federal entities for administrative support related to management of applications submitted under this subpart.

"(C) MONITORING.—The Secretary may use funds available under this subpart to pay the expenses of Federal employees to conduct on-site monitoring of projects receiving $500,000 or more for any fiscal year under this subpart.

"(h) PROGRAM EVALUATION.—The Secretary may use funds appropriated to carry out this subpart to evaluate activities carried out under the subpart.

"(i) MINIMUM FUNDING REQUIRED.—

"(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall ensure that, for each fiscal year, at least the following amounts are provided under this subpart to address the following needs:

"(A) $12,832,000 to address the educational, related services, transitional, and early intervention needs of children with deaf-blindness.

"(B) $4,000,000 to address the postsecondary, vocational, technical, continuing, and adult education needs of individuals with deafness.

"(C) $4,000,000 to address the educational, related services, and transitional needs of children with an emotional disturbance and those who are at risk of developing an emotional disturbance.

"(2) RATABLE REDUCTION.—If the total amount appropriated to carry out sections 672, 673, and 685 for any fiscal year is less than $130,000,000, the amounts listed in (1) shall be ratably reduced.

"(j) ELIGIBILITY FOR FINANCIAL ASSISTANCE.—Effective for fiscal years for which the Secretary may make grants under section 619(b), no State or local educational agency or educational service agency or other public institution or agency may receive a grant under this subpart which relates exclusively to programs, projects, and activities pertaining to children aged three to five, inclusive, unless the State is eligible to receive a grant under section 619(b).

"Chapter 1—Improving Early Intervention, Educational, and Transitional Services and Results for Children with Disabilities through Coordinated Research and Personnel Preparation

"SEC. 671. FINDINGS AND PURPOSE.

"(a) FINDINGS.—The Congress finds the following:

"(1) The Federal Government has an ongoing obligation to support programs, projects, and activities that contribute to positive results for children with disabilities, enabling them—

"(A) to meet their early intervention, educational, and transitional goals and, to the maximum extent possible, educational standards that have been established for all children; and

"(B) to acquire the skills that will empower them to lead productive and independent adult lives.

"(2)(A) As a result of more than 20 years of Federal support for research, demonstration projects, and personnel preparation, there is an important knowledge base for improving results for children with disabilities.

"(B) Such knowledge should be used by States and local educational agencies to design and implement state-of-the-art educational systems that consider the needs of, and include, children with disabilities, especially in environments in which they can learn along with their peers and achieve results measured by the same standards as the results of their peers.

"(3)(A) Continued Federal support is essential for the development and maintenance of a coordinated and high-quality program of research, demonstration projects, dissemination of information, and personnel preparation.

"(B) Such support—

"(i) enables State educational agencies and local educational agencies to improve their educational systems and results for children with disabilities;

"(ii) enables State and local agencies to improve early intervention services and results for infants and toddlers with disabilities and their families; and

"(iii) enhances the opportunities for general and special education personnel, related services personnel, parents, and paraprofessionals to participate in pre-service and in-service training, to collaborate, and to improve results for children with disabilities and their families.

"(4) The Federal Government plays a critical role in facilitating the availability of an adequate number of qualified personnel—

"(A) to serve effectively the over 5,000,000 children with disabilities;

"(B) to assume leadership positions in administrative and direct-service capacities related to teacher training and research concerning the provision of early intervention services, special education, and related services; and

"(C) to work with children with low-incidence disabilities and their families.

"(5) The Federal Government performs the role described in paragraph (4)—

"(A) by supporting models of personnel development that reflect successful practice, including strategies for recruiting, preparing, and retaining personnel;

"(B) by promoting the coordination and integration of—

"(i) personnel-development activities for teachers of children with disabilities; and

"(ii) other personnel-development activities supported under Federal law, including this chapter;

"(C) by supporting the development and dissemination of information about teaching standards; and

"(D) by promoting the coordination and integration of personnel-development activities through linkage with systemic-change activities within States and nationally.

"(b) PURPOSE.—The purpose of this chapter is to provide Federal funding for coordinated research, demonstration projects, outreach, and personnel-preparation activities that—

"(1) are described in sections 672 through 674;

"(2) are linked with, and promote, systemic change; and

"(3) improve early intervention, educational, and transitional results for children with disabilities.

"SEC. 672. RESEARCH AND INNOVATION TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES.

"(a) IN GENERAL.—The Secretary shall make competitive grants to, or enter into contracts or cooperative agreements with, eligible entities to produce, and advance the use of, knowledge—

"(1) to improve—

"(A) services provided under this Act, including the practices of professionals and others involved in providing such services to children with disabilities; and

"(B) educational results for children with disabilities;

"(2) to address the special needs of preschool-aged children and infants and toddlers with disabilities, including infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to them;

"(3) to address the specific problems of over-identification and under-identification of children with disabilities;

"(4) to develop and implement effective strategies for addressing inappropriate behavior of students with disabilities in schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services;

"(5) to improve secondary and postsecondary education and transitional services for children with disabilities; and

"(6) to address the range of special education, related services, and early intervention needs of children with disabilities who need significant levels of support to maximize their participation and learning in school and in the community.

"(b) NEW KNOWLEDGE PRODUCTION; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that lead to the production of new knowledge.

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

"(A) Expanding understanding of the relationships between learning characteristics of children with disabilities and the diverse ethnic, cultural, linguistic, social, and economic backgrounds of children with disabilities and their families.

"(B) Developing or identifying innovative, effective, and efficient curricula designs, instructional approaches, and strategies, and developing or identifying positive academic and social learning opportunities, that—

"(i) enable children with disabilities to make effective transitions described in section 674(b)(3)(C) or transitions between educational settings; and

"(ii) improve educational and transitional results for children with disabilities at all levels of the educational system in which the activities are carried out and, in particular, that improve the progress of the children, as measured by assessments within the general education curriculum involved.

"(C) Advancing the design of assessment tools and procedures that will accurately and efficiently determine the special instructional, learning, and behavioral needs of children with disabilities, especially within the context of general education.

"(D) Studying and promoting improved alignment and compatibility of general and special education reforms concerned with curricular and instructional reform, evaluation and accountability of such reforms, and administrative procedures.

"(E) Advancing the design, development, and integration of technology, assistive technology devices, media, and materials, to improve early intervention, educational, and transitional services and results for children with disabilities.

"(F) Improving designs, processes, and results of personnel preparation for personnel who provide services to children with disabilities through the acquisition of information on, and implementation of, research-based practices.

"(G) Advancing knowledge about the coordination of education with health and social services.

"(H) Producing information on the long-term impact of early intervention and education on results for individuals with disabilities through large-scale longitudinal studies.

"(c) INTEGRATION OF RESEARCH AND PRACTICE; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that integrate research and practice, including activities that support State systemic-change and local capacity-building and improvement efforts.

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

"(A) Model demonstration projects to apply and test research findings in typical service settings to determine the usability, effectiveness, and general applicability of such research findings in such areas as improving instructional methods, curricula, and tools, such as textbooks and media.

"(B) Demonstrating and applying research-based findings to facilitate systemic changes, related to the provision of services to children with disabilities, in policy, procedure, practice, and the training and use of personnel.

"(C) Promoting and demonstrating the coordination of early intervention and educational services for children with disabilities with services provided by health, rehabilitation, and social service agencies.

"(D) Identifying and disseminating solutions that overcome systemic barriers to the effective and efficient delivery of early intervention, educational, and transitional services to children with disabilities.

"(d) IMPROVING THE USE OF PROFESSIONAL KNOWLEDGE; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that improve the use of professional knowledge, including activities that support State systemic-change and local capacity-building and improvement efforts.

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

"(A) Synthesizing useful research and other information relating to the provision of services to children with disabilities, including effective practices.

"(B) Analyzing professional knowledge bases to advance an understanding of the relationships, and the effectiveness of practices, relating to the provision of services to children with disabilities.

"(C) Ensuring that research and related products are in appropriate formats for distribution to teachers, parents, and individuals with disabilities.

"(D) Enabling professionals, parents of children with disabilities, and other persons, to learn about, and implement, the findings of research, and successful practices developed in model demonstration projects, relating to the provision of services to children with disabilities.

"(E) Conducting outreach, and disseminating information relating to successful approaches to overcoming systemic barriers to the effective and efficient delivery of early intervention, educational, and transitional services, to personnel who provide services to children with disabilities.

"(e) BALANCE AMONG ACTIVITIES AND AGE RANGES.—In carrying out this section, the Secretary shall ensure that there is an appropriate balance—

"(1) among knowledge production, integration of research and practice, and use of professional knowledge; and

"(2) across all age ranges of children with disabilities.

"(f) APPLICATIONS.—An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1998 through 2002.

"SEC. 673. PERSONNEL PREPARATION TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES.

"(a) IN GENERAL.—The Secretary shall, on a competitive basis, make grants to, or enter into contracts or cooperative agreements with, eligible entities—

"(1) to help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education, to work with children with disabilities; and

"(2) to ensure that those personnel have the skills and knowledge, derived from practices that have been determined, through research and experience, to be successful, that are needed to serve those children.

"(b) Low-Incidence Disabilities; Authorized Activities.—

"(1) In general.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that benefit children with low-incidence disabilities.

"(2) Authorized activities.—Activities that may be carried out under this subsection include activities such as the following:

"(A) Preparing persons who—

"(i) have prior training in educational and other related service fields; and

"(ii) are studying to obtain degrees, certificates, or licensure that will enable them to assist children with disabilities to achieve the objectives set out in their individualized education programs described in section 614(d), or to assist infants and toddlers with disabilities to achieve the outcomes described in their individualized family service plans described in section 636.

"(B) Providing personnel from various disciplines with interdisciplinary training that will contribute to improvement in early intervention, educational, and transitional results for children with disabilities.

"(C) Preparing personnel in the innovative uses and application of technology to enhance learning by children with disabilities through early intervention, educational, and transitional services.

"(D) Preparing personnel who provide services to visually impaired or blind children to teach and use Braille in the provision of services to such children.

"(E) Preparing personnel to be qualified educational interpreters, to assist children with disabilities, particularly deaf and hard-of-hearing children in school and school-related activities and deaf and hard-of-hearing infants and toddlers and preschool children in early intervention and preschool programs.

"(F) Preparing personnel who provide services to children with significant cognitive disabilities and children with multiple disabilities.

"(3) Definition.—As used in this section, the term 'low-incidence disability' means—

"(A) a visual or hearing impairment, or simultaneous visual and hearing impairments;

"(B) a significant cognitive impairment; or

"(C) any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.

"(4) Selection of recipients.—In selecting recipients under this subsection, the Secretary may give preference to applications that propose to prepare personnel in more than one low-incidence disability, such as deafness and blindness.

"(5) Preparation in use of Braille.—The Secretary shall ensure that all recipients of assistance under this subsection who will use that assistance to prepare personnel to provide services to visually impaired or blind children that can appropriately be provided in Braille will prepare those individuals to provide those services in Braille.

"(c) Leadership Preparation; Authorized Activities.—

"(1) In general.—In carrying out this section, the Secretary shall support leadership preparation activities that are consistent with the objectives described in subsection (a).

"(2) Authorized activities.—Activities that may be carried out under this subsection include activities such as the following:

"(A) Preparing personnel at the advanced graduate, doctoral, and postdoctoral levels of training to administer, enhance, or provide services for children with disabilities.

"(B) Providing interdisciplinary training for various types of leadership personnel, including teacher preparation faculty, administrators, researchers, supervisors, principals, and other persons whose work affects early intervention, educational, and transitional services for children with disabilities.

"(d) PROJECTS OF NATIONAL SIGNIFICANCE; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that are of national significance and have broad applicability.

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

"(A) Developing and demonstrating effective and efficient practices for preparing personnel to provide services to children with disabilities, including practices that address any needs identified in the State's improvement plan under part C;

"(B) Demonstrating the application of significant knowledge derived from research and other sources in the development of programs to prepare personnel to provide services to children with disabilities.

"(C) Demonstrating models for the preparation of, and interdisciplinary training of, early intervention, special education, and general education personnel, to enable the personnel—

"(i) to acquire the collaboration skills necessary to work within teams to assist children with disabilities; and

"(ii) to achieve results that meet challenging standards, particularly within the general education curriculum.

"(D) Demonstrating models that reduce shortages of teachers, and personnel from other relevant disciplines, who serve children with disabilities, through reciprocity arrangements between States that are related to licensure and certification.

"(E) Developing, evaluating, and disseminating model teaching standards for persons working with children with disabilities.

"(F) Promoting the transferability, across State and local jurisdictions, of licensure and certification of teachers and administrators working with such children.

"(G) Developing and disseminating models that prepare teachers with strategies, including behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom.

"(H) Institutes that provide professional development that addresses the needs of children with disabilities to teachers or teams of teachers, and where appropriate, to school board members, administrators, principals, pupil-service personnel, and other staff from individual schools.

"(I) Projects to improve the ability of general education teachers, principals, and other administrators to meet the needs of children with disabilities.

"(J) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, qualified teachers, especially from groups that are underrepresented in the teaching profession, including individuals with disabilities.

"(K) Supporting institutions of higher education with minority enrollments of at least 25 percent for the purpose of preparing personnel to work with children with disabilities.

"(e) HIGH-INCIDENCE DISABILITIES; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), to benefit children with high-incidence disabilities, such as children with specific learning disabilities, speech or language impairment, or mental retardation.

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include the following:

"(A) Activities undertaken by institutions of higher education, local educational agencies, and other local entities—

"(i) to improve and reform their existing programs to prepare teachers and related services personnel—

"(I) to meet the diverse needs of children with disabilities for early intervention, educational, and transitional services; and

"(II) to work collaboratively in regular classroom settings; and

"(ii) to incorporate best practices and research-based knowledge about preparing personnel so they will have the knowledge and skills to improve educational results for children with disabilities.

"(B) Activities incorporating innovative strategies to recruit and prepare teachers and other personnel to meet the needs of areas in which there are acute and persistent shortages of personnel.

"(C) Developing career opportunities for paraprofessionals to receive training as special education teachers, related services personnel, and early intervention personnel, including interdisciplinary training to enable them to improve early intervention, educational, and transitional results for children with disabilities.

"(f) APPLICATIONS.—

"(1) IN GENERAL.—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(2) IDENTIFIED STATE NEEDS.—

"(A) REQUIREMENT TO ADDRESS IDENTIFIED NEEDS.—Any application under subsection (b), (c), or (e) shall include information demonstrating to the satisfaction of the Secretary that the activities described in the application will address needs identified by the State or States the applicant proposes to serve.

"(B) COOPERATION WITH STATE EDUCATIONAL AGENCIES.—Any applicant that is not a local educational agency or a State educational agency shall include information demonstrating to the satisfaction of the Secretary that the applicant and one or more State educational agencies have engaged in a cooperative effort to plan the project to which the application pertains, and will cooperate in carrying out and monitoring the project.

"(3) ACCEPTANCE BY STATES OF PERSONNEL PREPARATION REQUIREMENTS.—The Secretary may require applicants to provide letters from one or more States stating that the States—

"(A) intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities; and

"(B) need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development under parts B and C.

"(g) SELECTION OF RECIPIENTS.—

"(1) IMPACT OF PROJECT.—In selecting recipients under this section, the Secretary may consider the impact of the project proposed in the application in meeting the need for personnel identified by the States.

"(2) REQUIREMENT ON APPLICANTS TO MEET STATE AND PROFESSIONAL STANDARDS.—The Secretary shall make grants under this section only to eligible applicants that meet State and professionally-recognized standards for the preparation of special education and related services personnel, if the purpose of the project is to assist personnel in obtaining degrees.

"(3) PREFERENCES.—In selecting recipients under this section, the Secretary may—

"(A) give preference to institutions of higher education that are educating regular education personnel to meet the needs of children with disabilities in integrated settings and educating special education personnel to work in collaboration with regular educators in integrated settings; and

"(B) give preference to institutions of higher education that are successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which they are preparing individuals.

"(h) SERVICE OBLIGATION.—

"(1) IN GENERAL.—Each application for funds under subsections (b) and (e), and to the extent appropriate subsection (d), shall include an assurance that the applicant will ensure that individuals who receive a scholarship under the proposed project will subsequently provide special education and related services to children with disabilities for a period of 2 years for every year for which assistance was received or repay all or part of the cost of that assistance, in accordance with regulations issued by the Secretary.

"(2) LEADERSHIP PREPARATION.—Each application for funds under subsection (c) shall include an assurance that the applicant will ensure that individuals who receive a scholarship under the proposed project will subsequently perform work related to their preparation for a period of 2 years for every year for which assistance was received or repay all or part of such costs, in accordance with regulations issued by the Secretary.

"(i) SCHOLARSHIPS.—The Secretary may include funds for scholarships, with necessary stipends and allowances, in awards under subsections (b), (c), (d), and (e).

"(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1998 through 2002.

"SEC. 674. STUDIES AND EVALUATIONS.

"(a) STUDIES AND EVALUATIONS.—

"(1) IN GENERAL.—The Secretary shall, directly or through grants, contracts, or cooperative agreements, assess the progress in the implementation of this Act, including the effectiveness of State and local efforts to provide—

"(A) a free appropriate public education to children with disabilities; and

"(B) early intervention services to infants and toddlers with disabilities and infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to them.

"(2) AUTHORIZED ACTIVITIES.—In carrying out this subsection, the Secretary may support studies, evaluations, and assessments, including studies that—

"(A) analyze measurable impact, outcomes, and results achieved by State educational agencies and local educational agencies through their activities to reform policies, procedures, and practices designed to improve educational and transitional services and results for children with disabilities;

"(B) analyze State and local needs for professional development, parent training, and other appropriate activities that can reduce the need for disciplinary actions involving children with disabilities;

"(C) assess educational and transitional services and results for children with disabilities from minority backgrounds, including—

"(i) data on—

"(I) the number of minority children who are referred for special education evaluation;

"(II) the number of minority children who are receiving special education and related services and their educational or other service placement; and

"(III) the number of minority children who graduated from secondary and postsecondary education programs; and

"(ii) the performance of children with disabilities from minority backgrounds on State assessments and other performance indicators established for all students;

"(D) measure educational and transitional services and results of children with disabilities under this Act, including longitudinal studies that—

"(i) examine educational and transitional services and results for children with disabilities who are 3 through 17 years of age and are receiving special education and related services under this Act, using a national, representative sample of distinct age cohorts and disability categories; and

"(ii) examine educational results, postsecondary placement, and employment status of individuals with disabilities, 18 through 21 years of age, who are receiving or have received special education and related services under this Act; and

"(E) identify and report on the placement of children with disabilities by disability category.

"(b) NATIONAL ASSESSMENT.—

"(1) IN GENERAL.—The Secretary shall carry out a national assessment of activities carried out with Federal funds under this Act in order—

"(A) to determine the effectiveness of this Act in achieving its purposes;

"(B) to provide information to the President, the Congress, the States, local educational agencies, and the public on how to implement the Act more effectively; and

"(C) to provide the President and the Congress with information that will be useful in developing legislation to achieve the purposes of this Act more effectively.

"(2) CONSULTATION.—The Secretary shall plan, review, and conduct the national assessment under this subsection in consultation with researchers, State practitioners, local practitioners, parents of children with disabilities, individuals with disabilities, and other appropriate individuals.

"(3) SCOPE OF ASSESSMENT.—The national assessment shall examine how well schools, local educational agencies, States, other recipients of assistance under this Act, and the Secretary are achieving the purposes of this Act, including—

"(A) improving the performance of children with disabilities in general scholastic activities and assessments as compared to nondisabled children;

"(B) providing for the participation of children with disabilities in the general curriculum;

"(C) helping children with disabilities make successful transitions from—

"(i) early intervention services to preschool education;

"(ii) preschool education to elementary school; and

"(iii) secondary school to adult life;

"(D) placing and serving children with disabilities, including minority children, in the least restrictive environment appropriate;

"(E) preventing children with disabilities, especially children with emotional disturbances and specific learning disabilities, from dropping out of school;

"(F) addressing behavioral problems of children with disabilities as compared to nondisabled children;

"(G) coordinating services provided under this Act with each other, with other educational and pupil services (including preschool services), and with health and social services funded from other sources;

"(H) providing for the participation of parents of children with disabilities in the education of their children; and

"(I) resolving disagreements between education personnel and parents through activities such as mediation.

"(4) INTERIM AND FINAL REPORTS.—The Secretary shall submit to the President and the Congress—

"(A) an interim report that summarizes the preliminary findings of the assessment not later than October 1, 1999; and

"(B) a final report of the findings of the assessment not later than October 1, 2001.

"(c) ANNUAL REPORT.—The Secretary shall report annually to the Congress on—

"(1) an analysis and summary of the data reported by the States and the Secretary of the Interior under section 618;

"(2) the results of activities conducted under subsection (a);

"(3) the findings and determinations resulting from reviews of State implementation of this Act.

"(d) TECHNICAL ASSISTANCE TO LEAS.—The Secretary shall provide directly, or through grants, contracts, or cooperative agreements, technical assistance to local educational agencies to assist them in carrying out local capacity-building and improvement projects under section 611(f)(4) and other LEA systemic improvement activities under this Act.

"(e) RESERVATION FOR STUDIES AND TECHNICAL ASSISTANCE.—

"(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision of this Act, the Secretary may reserve up to one-half of one percent of the amount appropriated under parts B and C for each fiscal year to carry out this section.

"(2) MAXIMUM AMOUNT.—For the first fiscal year in which the amount described in paragraph (1) is at least $20,000,000, the maximum amount the Secretary may reserve under paragraph (1) is $20,000,000. For each subsequent fiscal year, the maximum amount the Secretary may reserve under paragraph (1) is $20,000,000, increased by the cumulative rate of inflation since the fiscal year described in the previous sentence.

"(3) USE OF MAXIMUM AMOUNT.—In any fiscal year described in paragraph (2) for which the Secretary reserves the maximum amount described in that paragraph, the Secretary shall use at least half of the reserved amount for activities under subsection (d).

"Chapter 2—Improving Early Intervention, Educational, and Transitional Services and Results for Children With Disabilities Through Coordinated Technical Assistance, Support, and Dissemination of Information

"SEC. 681. FINDINGS AND PURPOSES.

"(a) IN GENERAL.—The Congress finds as follows:

"(1) National technical assistance, support, and dissemination activities are necessary to ensure that parts B and C are fully implemented and achieve quality early intervention, educational, and transitional results for children with disabilities and their families.

"(2) Parents, teachers, administrators, and related services personnel need technical assistance and information in a timely, coordinated, and accessible manner in order to improve early intervention, educational, and transitional services and results at the State and local levels for children with disabilities and their families.

"(3) Parent training and information activities have taken on increased importance in efforts to assist parents of a child with a disability in dealing with the multiple pressures of rearing such a child and are of particular importance in—

"(A) ensuring the involvement of such parents in planning and decisionmaking with respect to early intervention, educational, and transitional services;

"(B) achieving quality early intervention, educational, and transitional results for children with disabilities;

"(C) providing such parents information on their rights and protections under this Act to ensure improved early intervention, educational, and transitional results for children with disabilities;

"(D) assisting such parents in the development of skills to participate effectively in the education and development of their children and in the transitions described in section 674(b)(3)(C); and

"(E) supporting the roles of such parents as participants within partnerships seeking to improve early intervention, educational, and transitional services and results for children with disabilities and their families.

"(4) Providers of parent training and information activities need to ensure that such parents who have limited access to services and supports, due to economic, cultural, or linguistic barriers, are provided with access to appropriate parent training and information activities.

"(5) Parents of children with disabilities need information that helps the parents to understand the rights and responsibilities of their children under part B.

"(6) The provision of coordinated technical assistance and dissemination of information to State and local agencies, institutions of higher education, and other providers of services to children with disabilities is essential in—

"(A) supporting the process of achieving systemic change;

"(B) supporting actions in areas of priority specific to the improvement of early intervention, educational, and transitional results for children with disabilities;

"(C) conveying information and assistance that are—

"(i) based on current research (as of the date the information and assistance are conveyed);

"(ii) accessible and meaningful for use in supporting systemic-change activities of State and local partnerships; and

"(iii) linked directly to improving early intervention, educational, and transitional services and results for children with disabilities and their families; and

"(D) organizing systems and information networks for such information, based on modern technology related to—

"(i) storing and gaining access to information; and

"(ii) distributing information in a systematic manner to parents, students, professionals, and policymakers.

"(7) Federal support for carrying out technology research, technology development, and educational media services and activities has resulted in major innovations that have significantly improved early intervention, educational, and transitional services and results for children with disabilities and their families.

"(8) Such Federal support is needed—

"(A) to stimulate the development of software, interactive learning tools, and devices to address early intervention, educational, and transitional needs of children with disabilities who have certain disabilities;

"(B) to make information available on technology research, technology development, and educational media services and activities to individuals involved in the provision of early intervention, educational, and transitional services to children with disabilities;

"(C) to promote the integration of technology into curricula to improve early intervention, educational, and transitional results for children with disabilities;

"(D) to provide incentives for the development of technology and media devices and tools that are not readily found or available because of the small size of potential markets;

"(E) to make resources available to pay for such devices and tools and educational media services and activities;

"(F) to promote the training of personnel—

"(i) to provide such devices, tools, services, and activities in a competent manner; and

"(ii) to assist children with disabilities and their families in using such devices, tools, services, and activities; and

"(G) to coordinate the provision of such devices, tools, services, and activities—

"(i) among State human services programs; and

"(ii) between such programs and private agencies.

"(b) PURPOSES.—The purposes of this chapter are to ensure that—

"(1) children with disabilities, and their parents, receive training and information on their rights and protections under this Act, in order to develop the skills necessary to effectively participate in planning and decisionmaking relating to early intervention, educational, and transitional services and in systemic-change activities;

"(2) parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist such persons, through systemic-change activities and other efforts, to improve early intervention, educational, and transitional services and results for children with disabilities and their families;

"(3) appropriate technology and media are researched, developed, demonstrated, and made available in timely and accessible formats to parents, teachers, and all types of personnel providing services to children with disabilities to support their roles as partners in the improvement and implementation of early intervention, educational, and transitional services and results for children with disabilities and their families;

"(4) on reaching the age of majority under State law, children with disabilities understand their rights and responsibilities under part B, if the State provides for the transfer of parental rights under section 615(m); and

"(5) the general welfare of deaf and hard-of-hearing individuals is promoted by—

"(A) bringing to such individuals understanding and appreciation of the films and television programs that play an important part in the general and cultural advancement of hearing individuals;

"(B) providing, through those films and television programs, enriched educational and cultural experiences through which deaf and hard-of-hearing individuals can better understand the realities of their environment; and

"(C) providing wholesome and rewarding experiences that deaf and hard-of-hearing individuals may share.

"SEC. 682. PARENT TRAINING AND INFORMATION CENTERS.

"(a) PROGRAM AUTHORIZED.—The Secretary may make grants to, and enter into contracts and cooperative agreements with, parent organizations to support parent training and information centers to carry out activities under this section.

"(b) REQUIRED ACTIVITIES.—Each parent training and information center that receives assistance under this section shall—

"(1) provide training and information that meets the training and information needs of parents of children with disabilities living in the area served by the center, particularly underserved parents and parents of children who may be inappropriately identified;

"(2) assist parents to understand the availability of, and how to effectively use, procedural safeguards under this Act, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e);

"(3) serve the parents of infants, toddlers, and children with the full range of disabilities;

"(4) assist parents to—

"(A) better understand the nature of their children's disabilities and their educational and developmental needs;

"(B) communicate effectively with personnel responsible for providing special education, early intervention, and related services;

"(C) participate in decisionmaking processes and the development of individualized education programs under part B and individualized family service plans under part C;

"(D) obtain appropriate information about the range of options, programs, services, and resources available to assist children with disabilities and their families;

"(E) understand the provisions of this Act for the education of, and the provision of early intervention services to, children with disabilities; and

"(F) participate in school reform activities;

"(5) in States where the State elects to contract with the parent training and information center, contract with State educational agencies to provide, consistent with subparagraphs (B) and (D) of section 615(e)(2), individuals who meet with parents to explain the mediation process to them;

"(6) network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 685(d), and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities; and

"(7) annually report to the Secretary on—

"(A) the number of parents to whom it provided information and training in the most recently concluded fiscal year; and

"(B) the effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities.

"(c) OPTIONAL ACTIVITIES.—A parent training and information center that receives assistance under this section may—

"(1) provide information to teachers and other professionals who provide special education and related services to children with disabilities;

"(2) assist students with disabilities to understand their rights and responsibilities under section 615(m) on reaching the age of majority; and

"(3) assist parents of children with disabilities to be informed participants in the development and implementation of the State's State improvement plan under subpart 1.

"(d) APPLICATION REQUIREMENTS.—Each application for assistance under this section shall identify with specificity the special efforts that the applicant will undertake—

"(1) to ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and

"(2) to work with community-based organizations.

"(e) DISTRIBUTION OF FUNDS.—

"(1) IN GENERAL.—The Secretary shall make at least 1 award to a parent organization in each State, unless the Secretary does not receive an application from such an organization in each State of sufficient quality to warrant approval.

"(2) SELECTION REQUIREMENT.—The Secretary shall select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to parents, including parents in urban and rural areas, in the State.

"(f) QUARTERLY REVIEW.—

"(1) REQUIREMENTS.—

"(A) MEETINGS.—The board of directors or special governing committee of each organization that receives an award under this section shall meet at least once in each calendar quarter to review the activities for which the award was made.

"(B) ADVISING BOARD.—Each special governing committee shall directly advise the organization's governing board of its views and recommendations.

"(2) CONTINUATION AWARD.—When an organization requests a continuation award under this section, the board of directors or special governing committee shall submit to the Secretary a written review of the parent training and information program conducted by the organization during the preceding fiscal year.

"(g) DEFINITION OF PARENT ORGANIZATION.—As used in this section, the term 'parent organization' means a private nonprofit organization (other than an institution of higher education) that—

"(1) has a board of directors—

"(A) the majority of whom are parents of children with disabilities;

"(B) that includes—

"(i) individuals working in the fields of special education, related services, and early intervention; and

"(ii) individuals with disabilities; and

"(C) the parent and professional members of which are broadly representative of the population to be served; or

"(2) has—

"(A) a membership that represents the interests of individuals with disabilities and has established a special governing committee that meets the requirements of paragraph (1); and

"(B) a memorandum of understanding between the special governing committee and the board of directors of the organization that clearly outlines the relationship between the board and the committee and the decisionmaking responsibilities and authority of each.

"SEC. 683. COMMUNITY PARENT RESOURCE CENTERS.

"(a) IN GENERAL.—The Secretary may make grants to, and enter into contracts and cooperative agreements with, local parent organizations to support parent training and information centers that will help ensure that underserved parents of children with disabilities, including low-income parents, parents of children with limited English proficiency, and parents with disabilities, have the training and information they need to enable them to participate effectively in helping their children with disabilities—

"(1) to meet developmental goals and, to the maximum extent possible, those challenging standards that have been established for all children; and

"(2) to be prepared to lead productive independent adult lives, to the maximum extent possible.

"(b) REQUIRED ACTIVITIES.—Each parent training and information center assisted under this section shall—

"(1) provide training and information that meets the training and information needs of parents of children with disabilities proposed to be served by the grant, contract, or cooperative agreement;

"(2) carry out the activities required of parent training and information centers under paragraphs (2) through (7) of section 682(b);

"(3) establish cooperative partnerships with the parent training and information centers funded under section 682; and

"(4) be designed to meet the specific needs of families who experience significant isolation from available sources of information and support.

"(c) DEFINITION.—As used is this section, the term 'local parent organization' means a parent organization, as defined in section 682(g), that either—

"(1) has a board of directors the majority of whom are from the community to be served; or

"(2) has—

"(A) as a part of its mission, serving the interests of individuals with disabilities from such community; and

"(B) a special governing committee to administer the grant, contract, or cooperative agreement, a majority of the members of which are individuals from such community.

"SEC. 684. TECHNICAL ASSISTANCE FOR PARENT TRAINING AND INFORMATION CENTERS.

"(a) IN GENERAL.—The Secretary may, directly or through awards to eligible entities, provide technical assistance for developing, assisting, and coordinating parent training and information programs carried out by parent training and information centers receiving assistance under sections 682 and 683.

"(b) AUTHORIZED ACTIVITIES.—The Secretary may provide technical assistance to a parent training and information center under this section in areas such as—

"(1) effective coordination of parent training efforts;

"(2) dissemination of information;

"(3) evaluation by the center of itself;

"(4) promotion of the use of technology, including assistive technology devices and assistive technology services;

"(5) reaching underserved populations;

"(6) including children with disabilities in general education programs;

"(7) facilitation of transitions from—

"(A) early intervention services to preschool;

"(B) preschool to school; and

"(C) secondary school to postsecondary environments; and

"(8) promotion of alternative methods of dispute resolution.

"SEC. 685. COORDINATED TECHNICAL ASSISTANCE AND DISSEMINATION.

"(a) IN GENERAL.—The Secretary shall, by competitively making grants or entering into contracts and cooperative agreements with eligible entities, provide technical assistance and information, through such mechanisms as institutes, Regional

Resource Centers, clearinghouses, and programs that support States and local entities in building capacity, to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and address systemic-change goals and priorities.

"(b) SYSTEMIC TECHNICAL ASSISTANCE; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall carry out or support technical assistance activities, consistent with the objectives described in subsection (a), relating to systemic change.

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

"(A) Assisting States, local educational agencies, and other participants in partnerships established under subpart 1 with the process of planning systemic changes that will promote improved early intervention, educational, and transitional results for children with disabilities.

"(B) Promoting change through a multistate or regional framework that benefits States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic-change outcomes.

"(C) Increasing the depth and utility of information in ongoing and emerging areas of priority need identified by States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic-change outcomes.

"(D) Promoting communication and information exchange among States, local educational agencies, and other participants in partnerships, based on the needs and concerns identified by the participants in the partnerships, rather than on externally imposed criteria or topics, regarding—

"(i) the practices, procedures, and policies of the States, local educational agencies, and other participants in partnerships; and

"(ii) accountability of the States, local educational agencies, and other participants in partnerships for improved early intervention, educational, and transitional results for children with disabilities.

"(c) SPECIALIZED TECHNICAL ASSISTANCE; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall carry out or support activities, consistent with the objectives described in subsection (a), relating to areas of priority or specific populations.

"(2) AUTHORIZED ACTIVITIES.—Examples of activities that may be carried out under this subsection include activities that—

"(A) focus on specific areas of high-priority need that—

"(i) are identified by States, local educational agencies, and other participants in partnerships;

"(ii) require the development of new knowledge, or the analysis and synthesis of substantial bodies of information not readily available to the States, agencies, and other participants in partnerships; and

"(iii) will contribute significantly to the improvement of early intervention, educational, and transitional services and results for children with disabilities and their families;

"(B) focus on needs and issues that are specific to a population of children with disabilities, such as the provision of single-State and multi-State technical assistance and in-service training—

"(i) to schools and agencies serving deaf-blind children and their families; and

"(ii) to programs and agencies serving other groups of children with low-incidence disabilities and their families; or

"(C) address the postsecondary education needs of individuals who are deaf or hard of hearing.

"(d) NATIONAL INFORMATION DISSEMINATION; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall carry out or support information dissemination activities that are consistent with the objectives described in subsection (a), including activities that address national needs for the preparation and dissemination of information relating to eliminating barriers to systemic-change and improving early intervention, educational, and transitional results for children with disabilities.

"(2) AUTHORIZED ACTIVITIES.—Examples of activities that may be carried out under this subsection include activities relating to—

"(A) infants and toddlers with disabilities and their families, and children with disabilities and their families;

"(B) services for populations of children with low-incidence disabilities, including deaf-blind children, and targeted age groupings;

"(C) the provision of postsecondary services to individuals with disabilities;

"(D) the need for and use of personnel to provide services to children with disabilities, and personnel recruitment, retention, and preparation;

"(E) issues that are of critical interest to State educational agencies and local educational agencies, other agency personnel, parents of children with disabilities, and individuals with disabilities;

"(F) educational reform and systemic change within States; and

"(G) promoting schools that are safe and conducive to learning.

"(3) LINKING STATES TO INFORMATION SOURCES.—In carrying out this subsection, the Secretary may support projects that link States to technical assistance resources, including special education and general education resources, and may make research and related products available through libraries, electronic networks, parent training projects, and other information sources.

"(e) APPLICATIONS.—An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"SEC. 686. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out sections 681 through 685 such sums as may be necessary for each of the fiscal years 1998 through 2002.

"SEC. 687. TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND UTILIZATION, AND MEDIA SERVICES.

"(a) IN GENERAL.—The Secretary shall competitively make grants to, and enter into contracts and cooperative agreements with, eligible entities to support activities described in subsections (b) and (c).

"(b) TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND UTILIZATION; AUTHORIZED ACTIVITIES.—

"(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities to promote the development, demonstration, and utilization of technology.

"(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

"(A) Conducting research and development activities on the use of innovative and emerging technologies for children with disabilities.

"(B) Promoting the demonstration and use of innovative and emerging technologies for children with disabilities by improving and expanding the transfer of technology from research and development to practice.

"(C) Providing technical assistance to recipients of other assistance under this section, concerning the development of accessible, effective, and usable products.

"(D) Communicating information on available technology and the uses of such technology to assist children with disabilities.

"(E) Supporting the implementation of research programs on captioning or video description.

"(F) Supporting research, development, and dissemination of technology with universal-design features, so that the technology is accessible to individuals with disabilities without further modification or adaptation.

"(G) Demonstrating the use of publicly-funded telecommunications systems to provide parents and teachers with information and training concerning early diagnosis of, intervention for, and effective teaching strategies for, young children with reading disabilities.

"(c) EDUCATIONAL MEDIA SERVICES; AUTHORIZED ACTIVITIES.—In carrying out this section, the Secretary shall support—

"(1) educational media activities that are designed to be of educational value to children with disabilities;

"(2) providing video description, open captioning, or closed captioning of television programs, videos, or educational materials through September 30, 2001; and after fiscal year 2001, providing video description, open captioning, or closed captioning of educational, news, and informational television, videos, or materials;

"(3) distributing captioned and described videos or educational materials through such mechanisms as a loan service;

"(4) providing free educational materials, including textbooks, in accessible media for visually impaired and print-disabled students in elementary, secondary, postsecondary, and graduate schools;

"(5) providing cultural experiences through appropriate nonprofit organizations, such as the National Theater of the Deaf, that—

"(A) enrich the lives of deaf and hard-of-hearing children and adults;

"(B) increase public awareness and understanding of deafness and of the artistic and intellectual achievements of deaf and hard-of-hearing persons; or

"(C) promote the integration of hearing, deaf, and hard-of-hearing persons through shared cultural, educational, and social experiences; and

"(6) compiling and analyzing appropriate data relating to the activities described in paragraphs (1) through (5).

"(d) APPLICATIONS.—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1998 through 2002.".

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. EFFECTIVE DATES.

(a) PARTS A AND B.—

(1) IN GENERAL.—Except as provided in paragraph (2), parts A and B of the Individuals with Disabilities Education Act, as amended by title I, shall take effect upon the enactment of this Act.

(2) EXCEPTIONS.—

(A) IN GENERAL.—Sections 612(a)(4), 612(a)(14), 612(a)(16), 614(d) (except for paragraph (6)), and 618 of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on July 1, 1998.

(B) SECTION 617.—Section 617 of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on October 1, 1997.

(C) INDIVIDUALIZED EDUCATION PROGRAMS AND COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT.—Section 618 of the Individuals with Disabilities Education Act, as in effect on the day before the date of the enactment of this Act, and the provisions of parts A and B of the Individuals with Disabilities Education Act relating to individualized education programs and the State's comprehensive system of personnel development, as so in effect, shall remain in effect until July 1, 1998.

(b) PART C.—Part C of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on July 1, 1998.

(c) PART D.—

(1) IN GENERAL.—Except as provided in paragraph (2), part D of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on October 1, 1997.

(2) EXCEPTION.—Paragraphs (1) and (2) of section 661(g) of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on January 1, 1998.

SEC. 202. TRANSITION.

Notwithstanding any other provision of law, beginning on October 1, 1997, the Secretary of Education may use funds appropriated under part D of the Individuals with Disabilities Education Act to make continuation awards for projects that were funded under section 618 and parts C through G of such Act (as in effect on September 30, 1997).

SEC. 203. REPEALERS.

(a) PART I.—Effective October 1, 1998, part I of the Individuals with Disabilities Education Act is hereby repealed.

(b) PART H.—Effective July 1, 1998, part H of such Act is hereby repealed.

(c) PARTS C, E, F, AND G.—Effective October 1, 1997, parts C, E, F, and G of such Act are hereby repealed.

EXPLANATION OF AMENDMENTS

The sole amendment, other than the Riggs amendment in the nature of a substitute, that was accepted by the Committee was the

Goodling amendment. The Goodling amendment made four changes to the bill. First, it amended section 612(a)(1), as it relates to prisoners, for reasons discussed below. Second, it made a technical clarification with respect to the application of the stay-put clause to section 615(k)(7) of the Act. Third, it defined the term "substantial evidence" for purposes of section 615(k) of the Act as meaning beyond a preponderance of the evidence. Finally, it amended section 616 of the Act as it relates to compliance, for reasons described below. The amendment in the nature of a substitute is explained in this report.

PURPOSE

The purposes of the Individuals with Disabilities Education Act Amendments of 1997 are to clarify and strengthen the Individuals with Disabilities Education Act (IDEA) by providing parents and educators with the tools to:

Preserve the right of children with disabilities to a free appropriate public education;

Promote improved educational results for children with disabilities through early intervention, preschool, and educational experiences that prepare them for later educational challenges and employment;

Expand and promote opportunities for parents, special education, related services, regular education, and early intervention service providers, and other personnel to work in new partnerships at both the State and local levels;

Create incentives to enhance the capacity of schools and other community-based entities to work effectively with children with disabilities and their families, through targeted funding for personnel training, research, media, technology, and the dissemination of technical assistance and best practices.

COMMITTEE ACTION

HEARINGS AND TESTIMONY

The Subcommittee on Early Childhood, Youth and Families held two hearings to consider the review and authorization of the Individuals with Disabilities Education Act on February 4 and 6, 1997.

Testifying at the February 4, 1997 hearing were: Judith E. Heumann, Assistant Secretary, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Washington, DC; Thomas R. Bloom, Inspector General, U.S. Department of Education, Washington, DC; Lou Barela, Director, Upper Solano County Special Education Local Plan Area, Fairfield, CA; Doris Husted, Parent, Albuquerque, NM; Dr. George Severns, Jr., Superintendent, Dover Area School District, Dover, PA; Phyllis Bertin, Director of Education, Windward School, White Plains, NY; Elisabeth Healey, School Director, Pittsburgh Board of Education, Pittsburgh, PA; and Lonnie Johns, Jacksonville Area Chamber of Commerce, Jacksonville, IL.

Testifying at the February 6, 1997 hearing were: John Bukey, Legal Counsel, California School Boards Association, Sacramento, CA; Lillian M. Brinkley, Principal, Willard Model Elementary

School, Norfolk, VA; Dr. Iris Metts, Superintendent, Christina School District, Newark, DE; Kevin Comerford, Chief of Police, Buffalo, NY for R. Gil Kerlikowske, Buffalo Police Commissioner; Gregory W. Harding, Chief Deputy Director for Support Services, Department of Corrections, Sacramento, CA; and Dr. Steven Steurer, Executive Director, Correctional Education Association, Lanham, MD.

INTRODUCTION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AMENDMENTS OF 1997 AND LEGISLATIVE ACTION

The Individuals with Disabilities Education Act Amendments of 1997, H.R. 5 (originally entitled the "IDEA Improvement Act of 1997," was introduced on Tuesday, January 7, 1997 by Chairman Bill Goodling (R–PA) and reported out of the Committee on Education and the Workforce on Wednesday, May 7, 1997 with amendments. H.R. 5, as amended, was ordered reported by a voice vote.

BACKGROUND AND NEED FOR LEGISLATION

Congress established a State grant program for the Education of Handicapped Children under title VI of the Elementary and Secondary Education Amendments of 1966 (P.L. 89–750). In 1970, Congress authorized the Education of the Handicapped Act (EHA) as title VI of P.L. 91–230. With the enactment of P.L. 91–230, the State grant program established in 1966 was redesignated as part B of the EHA.

In 1975, Congress passed the Education for All Handicapped Children Act, P.L. 94–142. It amended part B, the State grant program in the EHA. P.L. 94–142 refined and expanded requirements for State participation in the State grant program. In accepting State grant funds, a State was required to provide a free appropriate public education (FAPE) to all children with disabilities in the State according to specific procedures and civil rights protections.

From 1979 through 1994, a series of amendments to the EHA refined and increased in number, discretionary programs in personnel preparation, research, demonstration, and technical assistance. In 1986, the Handicapped Children's Protection Act, P.L. 99–372, was enacted. In amending part B of the EHA, P.L. 99–372 authorized attorneys' fees for parents who prevail in due process proceedings and judicial actions against school districts. Also in 1986, P.L. 99–457 was enacted, creating a new part H in the EHA. Part H provides funds for State programs in early intervention services for infants and toddlers with disabilities from birth through two years of age. The EHA amendments of 1990, P.L. 101–476, renamed the statute as the Individuals with Disabilities Education Act (IDEA). In 1994, P.L. 103–382, the Improving America's Schools Act of 1994, eliminated the separate authorization for the chapter 1 Handicapped Program and merged its authorization for funding with part B funding under the IDEA and gave school districts the discretion to remove children with disabilities to an interim alternative educational setting for up to 45 days when such children bring firearms to school.

This Committee believes that the critical issue now is to place greater emphasis on improving student performance and ensuring that children with disabilities receive a quality public education. Educational achievement for children with disabilities, while improving, is still less than satisfactory.

This review and authorization of the IDEA is needed to move to the next step of providing special education and related services to children with disabilities: to improve and increase their educational achievement.

SUMMARY

In reporting H.R. 5, the Individuals with Disabilities Education Act Amendments of 1997, the Committee improves the Individuals with Disabilities Education Act (IDEA) through provisions that: (1) place the emphasis on what is best educationally for children with disabilities rather than on paperwork for paperwork's sake; (2) give professionals, especially teachers, more influence and flexibility in the delivery of education to children with disabilities, and give school administrators and policymakers lower costs; (3) enhance the input of parents of children with disabilities in the decision making that affects their child's education; (4) make schools safer and describe how school officials may discipline children with disabilities; and (5) consolidate and target discretionary programs to strengthen the capacity of America's schools to effectively serve children, including infants and toddlers, with disabilities.

The Committee also makes it easier to understand and use the IDEA by simplifying its structure and the organization of provisions. The legislation alphabetizes definitions in section 602; revises the formula when appropriations reach a trigger level in section 611; consolidates all State educational agency eligibility requirements in section 612 and all local educational agency (LEA) eligibility requirements in section 613; groups evaluation and reevaluation, individualized education program, and placement provisions in section 614; and places all procedural safeguards requirements in section 615. Part H, the early intervention program for infants and toddlers, becomes part C. Other discretionary programs are condensed and consolidated into part D, with two authorized subparts including a new State Improvement program.

EXPLANATION OF THE BILL AND COMMITTEE VIEWS

In its 22 year life span, the Individuals with Disabilities Education Act has achieved many of the important goals it sought to achieve. Children with disabilities are for the most part well served in America's public and private schools and are guaranteed the right in every State and outlying area to a free appropriate public education by law.

The IDEA has been a very successful law. Prior to its implementation, approximately 1 million children with disabilities were denied education. The number of children with developmental disabilities in State institutions has declined by close to 90 percent. The number of young adults with disabilities enrolled in postsecondary education has tripled, and the unemployment rate for individuals with disabilities in their twenties is almost half that of their older counterparts.

Despite this progress, the promise of the law has not been fulfilled for too many children with disabilities. Too many students with disabilities are failing courses and dropping out of school. Almost twice as many students with disabilities drop out as compared to students without disabilities. Of further concern, is the continued inappropriate placement of children from minority backgrounds and children with limited English proficiency in special education. In addition, school officials and others complain that the current law is unclear and focuses too much on paperwork and process rather than on improving results for children.

This authorization is viewed by the Committee as an opportunity to review, strengthen, and improve IDEA to better educate children with disabilities and enable them to achieve a quality education by:

(1) Strengthening the role of parents;

(2) Ensuring access to the general education curriculum and reforms;

(3) Focusing on teaching and learning while reducing unnecessary paperwork requirements;

(4) Assisting educational agencies in addressing the costs of improving special education and related services to children with disabilities.

(5) Giving increased attention to racial, ethnic, and linguistic diversity to prevent inappropriate identification and mislabeling;

(6) Ensuring schools are safe and conducive to learning; and

(7) Encouraging parents and educators to work out their differences by using nonadversarial means.

In drafting the bill, the Committee was guided by the premise that, to achieve a quality education for children with disabilities, it should start with current law and build on the actions, experiences, information, facts, and research gathered over the life of the law, particularly in the last three years. Further, in developing these amendments the Committee distinguished between problems of implementation and problems with the law, and responded appropriately in addressing any issue raised.

Through this legislation the Committee intends to encourage exemplary practices that lead to improved teaching and learning experiences for children with disabilities, and that in turn, for these children, result in productive independent adult lives, including employment. Through these efforts, the Committee intends to assist States in the implementation of early intervention services for infants and toddlers with disabilities and their families, and support the smooth and effective transition of these children to preschool.

The Committee views the structure and substance of this legislation as critically important, if the Country is to see clearer understanding of, and better implementation and fuller compliance with, the requirements of IDEA.

TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Amendments to part A of the Individuals with Disabilities Education Act

Definitions

Section 602 of the Act consolidates the majority of the definitions in the Act and reorders them alphabetically. Most definitions in current law are retained, and where appropriate updated. For example the definitions of "State educational agency" and "Local educational agency" were amended to be consistent with the definition of these terms in title XIV of the Elementary and Secondary Education Act of 1965, as amended by the 1994 Improving America's Schools Act and term "intermediate educational unit" has been replaced by the term "educational service agency" and its definition, to reflect the more contemporary understanding of the broad and varied functions of such agencies.

The bill amends the definition of "related services", by adding "orientation and mobility services". This change is not intended to reduce or alter the scope of related services or special education services that are available to children with disabilities, but merely to emphasize the importance of orientation and mobility services. Orientation and mobility services are generally recognized to be services provided to children who are blind or have visual impairments. However, it is important to keep in mind that children with other disabilities may also need instruction in traveling around their school, or to and from school. A high school aged child with a mental disability, for example, might need to be taught how to get from class to class so that he can participate in his inclusive program. The addition of orientation and mobility services to the list of identified related services is not intended to result in the denial of appropriate services for children with disabilities who do not have visual impairments or blindness.

The bill retains the 13 disability categories. However, the bill expands the definition for service eligibility in part B called "developmental delay", to be used at State and local discretion, for children ages three through nine. The use of a specific disability category to determine a child's eligibility for special education and related services frequently has led to the use of the category to drive the development of the child's Individualized Education Program (IEP) and placement to a greater extent than the child's needs.

The Committee believes that in the early years of a child's development, it is often difficult to determine the precise nature of the child's disability. Use of "developmental delay" as part of a unified approach will allow the special education and related services to be directly related to the child's needs and prevent locking the child into an eligibility category which may be inappropriate or incorrect, and could actually reduce later referrals of children with disabilities to special education.

The Committee wants to make clear that changing the terminology from "serious emotional disturbance" to "serious emotional disturbance (hereinafter referred to as 'emotional disturbance')" in the definition of a child with a disability is intended to have no substantive or legal significance. It is intended strictly to eliminate the pejorative connotation of the term "serious." It should in no circumstances be construed to change the existing meaning of the term under 34 CFR 300.7(b)(9) as promulgated September 29, 1992.

Policy letters and regulations section 607

Section 607 maintains the requirements of current law that prescribe a 90 day public comment period for enacting proposed regulations under parts B and C, and establishes a baseline for regulations promulgated by the Secretary under the Act that provides protections to children with disabilities. The section also specifies that the Secretary not establish a rule required for compliance with, or eligibility under, this part without following the requirements of 5 U.S.C. 553. Section 607 also specifies that the Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate through various additional forms of communication, a list identifying the topic and other appropriate summary information, of correspondence from the Department of Education that describes its interpretation of IDEA or its regulations issued by the Department in the previous quarter. Furthermore, if the Secretary receives a written request regarding a policy, question, or interpretation under part B of IDEA, and determines that it raises an issue of general interest or applicability of national significance to the implementation of part B, the Secretary shall include a statement to that effect in any written response; and widely disseminate that response to SEAs, LEAs, parent and advocacy organizations, and other interested organizations subject to appropriate confidentiality laws. Not later than one year after responding on such a matter, the bill directs the Secretary to issue written guidance on the policy, question, or interpretation through such means as a policy memorandum, notice of interpretation, or notice of proposed rulemaking.

The bill requires that those written responses by the Secretary shall include an explanation that the Secretary's written response is provided as informal guidance and is not legally binding; and represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the facts presented.

The Committee recognizes the need for the Secretary to offer correspondence for a variety of reasons. Among those are technical assistance, interpretation and clarification of this Act and the accompanying regulations, and monitoring for compliance. Section 607 of the bill is not intended to prohibit the Secretary from answering such correspondence.

The Committee believes the guidance in section 607 is consistent with the public notice and comment procedures of the Administrative Procedures Act and will provide all stake holders with a common frame of reference and expectation with regard to any particular written correspondence from the Secretary, its significance, and its future implications. With the enactment of section 607, such guidance should reduce substantially the degree and amount of misapplication or misinterpretation of Secretarial correspondence.

Amendments to part B of the Individuals with Disabilities Education Act

Funding formula section 611

Section 611 of the Act retains the disability child count-based formula in current law until the appropriation for part B of the IDEA reaches $4,924,672,200. When this threshold funding level is reached, a change in the funding formula for distributing funds to States will be triggered. At that point, yearly child counts based on disability will no longer determine a State's allotment. When the threshold funding level is reached, a State's allotment will be based on two calculations, which would be added together to determine the State's allotment under the new formula: (1) the amount the State received in the year prior to the threshold amount being reached; and (2) the State's proportional share of funds that exceed that previous year's appropriation, based 85 percent on the State's census data for children from 3 through 21 (if the State provides FAPE to children of these ages), and 15 percent on the State's poverty rate. Distribution of part B funds within States will be on the same basis.

The legislation caps the maximum increase for a State gaining from the change in formula and includes a floor for States receiving less under the change in formula. States would receive no more than 1.5% more than the total percent part B appropriations increase for that year. In addition, the State would receive no less than either 1.5% less than the total percent part B appropriations increase for that year or 90% of the total percentage increase, whichever is greater. No State will receive less than the amount it received in the prior year. In the year the new formula is triggered, the State minimum will become ⅓ of one percent of the new formula funds.

The Committee wishes to make clear that the change from a formula based on the number of children with disabilities to a formula based on census and poverty should in no way be construed to modify the obligation of educational agencies to identify and serve children with disabilities.

Section 501 of P.L. 95–134, permitting consolidation of grants, would not apply to the outlying areas or freely associated States under this section. The purpose of this was to assure that entities actually use IDEA funds for delivering services to children with disabilities.

The percentage of the appropriation which will go to the Secretary of the Interior to provide special education and related services to Indian children with disabilities has changed to 1.226% of the total appropriation. This percentage will provide the Secretary of the Interior the same amount of funding as the 1.25% did under the past authorization, because the future amounts will come out of a larger base of funding in the total part B formula.

The Committee developed the change in formula to address the problem of over-identification of children with disabilities. When the Act was first passed in 1975, States were not providing educational services to many children with disabilities. Therefore, Congress proposed to distribute Federal funds for special education services in order to encourage and reward States for serving eligible children. In the 22 years since then, the States have made excellent progress in identifying children with disabilities and providing them access to special education, and are now serving 5.5 million children with disabilities or approximately 10 percent of children aged 3 through 17. Logically, a formula was established at that time that based funding on counting the number of children with disabilities identified. This was to encourage States to proactively locate children with disabilities.

Today, the growing problem is over identifying children as disabled when they might not be truly disabled. The challenge today is not so much how to provide access to special education services but how to appropriately provide educational services to children with disabilities in order to improve educational results for such children. As States consider this issue, more and more States are exploring alternatives for serving more children with learning problems in the regular educational classroom. But in doing so, they face the prospect of reductions in Federal funds, as long as funding is tied to child counts.

While it is unlikely that individual educators ever identify children for the additional funding that such identification brings, the financial incentive reduces the proactive scrutiny that such referrals would receive if they did not have the additional monetary benefit. It also reduces the scrutiny of children who might be moved back out of special education. In-State funding formulas that follow the current disability-based Federal child-count formula further reduce such scrutiny, with more children being identified to draw additional State funds.

This problem is most intense with minority children, especially African-American males. Over-identification of minority children, particularly in urban schools with high proportions of minority students, remains a serious and growing problem in this Nation. The problem also contributes to the referral of minority special education students to more restrictive environments. The Committee is also cognizant, however, that in some areas under identification remains a problem, particularly for minority children.

The Committee has squarely faced this problem by shifting, once the targeted threshold is reached, to a formula of which 85 percent of additional funds is based on the total school age population and 15 percent is based on the poverty statistic for children in a State. This system was encouraged in the 1994 report of the Department of Education's Inspector General. The Inspector General noted: "Because [a population-based] method [of allocating funds] uses objective data derived for other purposes, [this method] eliminates the financial incentives for manipulating student counts [that exist in the current formula], including retaining students in special education just to continue receiving Federal funds." The Committee added a poverty factor to the formula because there is a link between poverty and certain forms of disability. This concept was also encouraged by the Inspector General's report.

Based on the significant progress that has been made in providing access to special education and concerns about the over-identification of children as disabled, the Committee believes this new formula will address many of these concerns. This change will enable States to undertake good practices for addressing the learning needs of more children in the regular classroom without the unnecessary categorization or labeling thereby risking the loss of Federal funds. Changing the Federal formula may also motivate States to change their own formulas for distributing State aid in ways that eliminate inappropriate financial incentives for referring children to special education.

The bill continues to authorize that States may retain a portion of their State allotments with certain changes effective for fiscal year 1998. First, the 5 percent for administrative purposes is capped at the fiscal year 1997 level, with future annual increases limited to the lesser of the rate of inflation or the rate of Federal appropriation increases. The remaining 20 percent of the State's share of its part B allotment is capped in the same manner. Any excess above inflation in any year goes into a new one-year fund that must be distributed that year through grants to LEAs for local systemic improvement activities or for specific direct services. In the next year, the amounts expended for such activities must be distributed to LEAs based on the part B formula.

A new reporting provision was included for the Secretary of the Interior's Advisory Council. This is intended to provide a means of determining if the Advisory Council is carrying out its duties and whether the Secretary is incorporating the recommendations of the Council into the Department of the Interior's programs.

State eligibility section 612

Section 612 establishes the conditions of State eligibility for part B funds. Many provisions are retained from current law. Other provisions have been added to promote a better understanding of, and more consistent compliance with, part B of the statute.

Provisions retained from current law are obligations of a State to: establish a full educational opportunity goal and a timetable for meeting it; comply with the evaluation and confidentiality, IEP, and procedural safeguards provisions; require that private placements made by public agencies meet State standards; not commingle part B funds with State funds; seek public comment prior to adopting policies and procedures necessary to comply with this section; and meet LEA eligibility requirements if the SEA provides direct services. In addition, section 612 retains the opportunity of a State to apply for a waiver from the supplement not supplant provision, when it can demonstrate, through clear and convincing evidence, that it is providing a free appropriate public education to all children with disabilities in the State.

Other provisions in section 612 taken from current law are: (1) the construction clause pertaining to the fact that part B does not permit a State to reduce medical or other assistance or alter eligibility under titles V and XIX of the Social Security Act; and (2) the "by-pass" provision that allows the Secretary to make arrangements to provide services to children with disabilities in private schools, if a State is prohibited by State law from providing for the participation of such children.

Section 612 contains clarifications of current law. To receive part B funds, States are to make available a free appropriate public education to all children with disabilities, including children with disabilities who have been suspended or expelled from school.

States must also conduct child find activities, which include identification of children in private schools and a process to determine which children are in need of special education and receiving it (while allowing identified children not to be labeled with a disability category).

The bill provides that a State may also opt not to serve individuals who, in the educational placement prior to their incarceration in adult correctional facilities, were not actually identified as being a child with a disability under section 602(3) or did not have an individualized education program under this part. The Committee means to set the point in time when it is determined whether a child has been identified or had an IEP. This makes clear that services need not be provided to all children who were at one time determined to be eligible under this part. The Committee does not intend to permit the exclusion from services under part B of children who had been identified as children with disabilities and had an IEP, but who had left school prior to their incarceration. In other words, if a child had an IEP in his or her last educational placement, the child has an IEP for purposes of this provision. The Committee added language to make clear that children with disabilities aged 18 through 21, who did not have an IEP in their last educational placement but who had actually been identified should not be excluded from services.

The bill amends the provisions on least restrictive environment (redesignated as section 612(a)(5)) to ensure that the State's funding formula does not result in placements that violate the requirement that children be placed in the least restrictive environment.

The Committee supports the longstanding concept of the least restrictive environment, including the policy that, to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of special education and related services or supplementary aids and services cannot be achieved satisfactorily.

The Committee supports the longstanding policy of a continuum of alternative placements designed to meet the unique needs of each child with a disability. Placement options available include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. For disabled children placed in regular classes, supplementary aids and services and resource room services or itinerant instruction must also be offered as needed.

Section 612 also includes an obligation on a State to require LEAs to participate in transition planning conferences for toddlers with disabilities about to enter preschools; and to provide a proportionate amount of IDEA funds to private schools in which children with disabilities are enrolled, and, to the extent consistent with law, at State discretion, provide services on the premises of private, including parochial, schools.

Section 612 also includes several other factors that affect possible parental reimbursement for unilateral private placements of their child. Parents must give notice about their concerns and intent at the most recent IEP meeting or written notice ten days before they transfer the child to the private school. Prior to removal of the child from the public school, if the public agency informed the parents of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), the parents must make the child available for such an evaluation. If the parents do not comply with notice and evaluation requests or engage in unreasonable actions, hearing officers and courts may reduce or deny reimbursement to parents for unilateral private placements. The bill specifies that reduction or denial of reimbursement must not occur for parents' failure to comply with these requirements if parents are illiterate and cannot read English; compliance would result in physical or serious emotional harm to the child; the school prevented the parents from complying; or the parents had not received notice with regard to the potential consequences of noncompliance.

The bill strengthens the requirements on ensuring provision of services by noneducational agencies while retaining a single line of responsibility. The chief executive officer of a State must develop and implement interagency agreements and reimbursement mechanisms to ensure that educational agencies have access to funding from non-educational public agencies that are responsible for services that are also necessary for ensuring a free appropriate public education to children with disabilities.

A provision is added to the Act to strengthen the obligation to ensure that all services necessary to ensure a free appropriate public education are provided through the coordination of public educational and non-educational programs. This subsection is meant to reinforce two important principles: (1) that the State agency or LEA responsible for developing a child's IEP can look to non-educational agencies, such as Medicaid, to pay for or provide those services they (the non-educational agencies) are otherwise responsible for; and (2) that the State agency or LEA remains responsible for ensuring that children receive all the services described in their IEPs in a timely fashion, regardless of whether another agency will ultimately pay for the services.

The Committee places particular emphasis in the bill on the relationship between schools and the State Medicaid Agency in order to clarify that health services provided to children with disabilities who are Medicaid-eligible and meet the standards applicable to Medicaid, are not disqualified for reimbursement by Medicaid agencies because they are provided services in a school context in accordance with the child's IEP.

The bill makes a number of changes to clarify the responsibility of public school districts to children with disabilities who are placed by their parents in private schools. These changes should resolve a number of issues that have been the subject of an increasing amount of litigation in the last few years. First, the bill specifies that the total amount of money that must be spent to provide special education and related services to children in the State with disabilities who have been placed by their parents in private schools is limited to a proportional amount (that is, the amount consistent with the number and location of private school children with disabilities in the State) of the Federal funds available under part B. Second, the bill specifies that school districts may provide the special education and related services funded under part B on the premises of private, including parochial, schools. This provision is designed to implement the principle underlying the ruling of the Supreme Court in *Zobrest* v. *Catalina Foothills School Dist.* that it was not an "entanglement" violation of the First Amendment to provide a sign interpreter paid for with IDEA funds to a deaf student at his parochial school. Third, the bill clarifies that the child-find, identification, and evaluation provision of section 612(a)(3) applies to children placed by their parents in private schools. Comparable language is also included in the child-find provision itself to make it clear that this obligation is independent from the participation requirements addressed in section 612(a)(10)(A).

Section 612 also specifies that parents may be reimbursed for the cost of a private educational placement under certain conditions (i.e., when a due process hearing officer or judge determines that a public agency had not made a free appropriate public education available to the child, in a timely manner, prior to the parents enrolling the child in that placement without the public agency's consent). Previously, the child must have had received special education and related services under the authority of a public agency.

Section 612, as current law, requires that a State have in effect a Comprehensive System of Personnel Development (CSPD) that is designed to ensure an adequate supply of qualified personnel, including the establishment of procedures for acquiring and disseminating significant knowledge derived from educational research and for adopting, where appropriate, promising practices, materials, and technology. The bill requires the State to coordinate CSPD requirements with the personnel sections of a State improvement plan under part D, if the State has such a plan, so the State only has to meet one set of requirements for both purposes.

With regard to personnel standards, the bill adds two provisions to the standards in current law. Paraprofessionals and assistants must be appropriately trained and supervised in accordance with State law, regulations, or written policy in order to assist in the provision of special education and related services. In implementing the personnel standards requirements, a State may adopt a policy that includes a requirement that LEAs make an ongoing good-faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet State standards within three years.

With regard to section 612(a)(16), the Committee wishes to make clear that its requirements are not intended to prevent the integration of performance goals and indicators for children with disabilities into the performance goals and indicators for nondisabled children, so that SEAs and LEAs can be held accountable for all children.

Section 612(a)(19) specifies that a State must maintain its level of expenditures for special education and related services for children with disabilities from one year to the next. Calculations of the level of expenditures is not to include Federal or local dollars. Reductions from this level are allowed through a waiver from the Secretary for exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the State's financial resources. In the absence of a waiver situation, if a State fails to maintain its level of expenditures as required in this section, the Secretary shall reduce the State's allocation for any fiscal year following the year of the failure to maintain the level of effort required, by the same amount by which the State fails to meet the requirement.

The bill requires the Secretary, by regulation, to establish procedures for determining whether to grant a waiver under section 612(a)(19)(E) within one year of enactment based on compliance with the obligations of part B. These procedures are to include objective criteria and consideration of the results of compliance reviews of the State conducted by the Secretary. The Committee intends this provision to be a real mechanism for waivers under this provision for States that are complying with their obligations under this Act.

With regard to a State's advisory panel, in section 612(a)(21), the Committee has added more detail relating to the panel's duties and added representation from private and public charter schools and from the State's juvenile and adult corrections agencies.

Section 612 contains several new provisions. It requires a State to establish performance goals for children with disabilities and to develop indicators to judge such children's progress. Any State that has a State improvement plan under part D must revise it based on information it obtains from the assessment of such progress. It requires that children with disabilities participate in State and districtwide assessments of student progress, with or without accommodations as appropriate for the child. By July 1, 2000, for children that cannot participate in such assessments, alternative assessments must be developed and conducted. The State must report to the public on the assessment performance of children with disabilities with the same frequency and detail it reports on the performance of nondisabled children, including the number participating in regular assessments and the number participating in alternative assessments. Data related to children with disabilities must be disaggregated. Further, the section requires States to determine if there is a disproportionate number of long-term suspensions and expulsions of disabled children and if so to take appropriate action and to modify policies and procedures in order to be consistent with the Act.

The section retains the provision in current law requiring that the SEA have general supervisory authority over educational programs for children with disabilities, but provides that the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the part B requirements are met with respect to children with disabilities who are convicted as adults under State law and are incarcerated in adult prisons. In addition, the provisions requiring participation of students with disabilities in Statewide assessments will not apply, the transition services requirements will not apply to students whose eligibility under IDEA will terminate before their release from prison, and the IEP team may modify a student's IEP/placement if the State has a bona fide security or compelling penological interest that cannot otherwise be accommodated. These changes, however, do not affect the student's eligibility for services under IDEA. Neither do they affect students who are in juvenile facilities.

The Act specifies that if a State already has on file with the Secretary policies and procedures that demonstrate that it meets any requirement of Section 612, it shall be treated by the Secretary as meeting that requirement, and that State applications need be submitted only once, and remain in effect, until the State submits modifications it deems necessary. Further, the Secretary may require a State to modify its application to the extent necessary to ensure compliance if the Act or its regulations are amended, or there is a new interpretation by a Federal Court or the State's highest court or an official Department of Education finding of noncompliance with Federal law or regulations. These modifications would be developed and submitted subject to the same process requirements as the original plan.

Local educational agency eligibility section 613

Section 613 consolidates LEA eligibility requirements, which if met, make an LEA eligible for part B funding. The Committee believes that these amendments will promote a better understanding of and more consistent compliance with part B of the IDEA.

In section 613, the following provisions are retained without substantive alteration: conditions associated with notice of LEA or State agency ineligibility; compliance with part B of the IDEA and State requirements associated with it; consequences connected to direct services by the SEA when an LEA cannot or does not provide a free appropriate public education to children with disabilities within its jurisdiction; and the conditions associated with the joint establishment of eligibility, except that the mandatory obligation on an LEA eligible for less than $7,500 to consolidate with another LEA is deleted.

Section 613 maintains the requirement that LEAs must provide information to the SEA so that the SEA will be able to carry out its responsibilities. A specific reference is added to this provision regarding information that must be provided by the LEA so that the SEA can comply with the CSPD and personnel standards requirements.

The Committee also has included several modifications to current law in section 613. LEAs are required to submit an application only once to the SEA, instead of once every three years as under current regulations. Additional information may be required by the SEA when there are: amendments to the Act or its Federal regulations; new interpretations of either the Act or its regulations by Federal or State courts; or an official finding of noncompliance with Federal or State law or regulations. In these instances, the SEA may require an LEA to modify its application only to the extent necessary to ensure the LEA's compliance with part B of IDEA. This section also explicitly requires that an LEA make available to parents of children with disabilities and the general public all documents pertaining to the LEA's eligibility.

This section of the bill maintains the current supplement not supplant and maintenance of effort obligations on LEAs, except that LEAs are required to include only local funds expended for special education and related services in determining whether the LEA has maintained its effort. The bill includes a local "maintenance of effort" provision to ensure that the level of expenditures from State and local funds for the education of children with disabilities within each LEA does not drop below the level of such expenditures for the preceding year. However, the Committee recognizes that there are times when appropriate exceptions to this rule must be made. Thus, the bill includes four specific exceptions:

(1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel who are paid at or near the top of the agency's salary scale. This exception is included in recognition that, in some situations, when higher-salaried personnel depart from their positions in special education, they are replaced by qualified, lower-salaried staff. In such situations, as long as certain safeguards are in effect, the LEA should not be required to maintain the level of the higher-salaried departing personnel. In order for an LEA to invoke this exception, the agency must ensure that such voluntary retirement or resignation and replacement are in full conformity with existing school board policies in the agency, with the applicable collective bargaining agreement that is in effect at the time, and with applicable State statutes.

(2) A decrease in the enrollment of children with disabilities.

(3) The end of an agency's responsibility to provide an exceptionally costly program to a child with a disability because the child has left the agency's jurisdiction, no longer requires such a program, or has aged-out with respect to the agency's responsibility.

(4) The end of unusually large expenditures for long term purchases such as equipment or construction.

Section 613 also provides that in any fiscal year for which amounts appropriated under 611 exceed $4.1 billion, an LEA may treat, as local funds, up to 20 percent of the funds it receives under part B that exceed the amount it received in the previous fiscal year, effectively permitting local schools to reduce the level of local expenditures for special education and related services. This section gives a State the authority to prevent an LEA from reducing its local level of effort when an LEA has been cited by the SEA as failing to substantially comply with the Act. The Committee does not intend that the Secretary could find an SEA out of compliance based solely on the fact that LEAs in the State have reduced their effort under this provision.

New provisions in section 613 give LEAs increased flexibility in the use of part B funds. Section 613(a)(4)(A) allows an LEA to use part B funds for special education and related services provided in a regular class or other education related setting to a child with a disability in accordance with the child's IEP, even if one or more nondisabled children benefit from those services. In addition, section 613(g) allows an LEA, if granted the authority by the State, to use part B funds to permit a public school within the jurisdiction of the LEA to design, implement, and evaluate a school-based improvement plan that is consistent with the purposes and activities described under the State Program Improvement Grant program under part D of these amendments. A school-based improvement plan must be designed to improve educational and transitional results for all children, consistent with section 613(a)(4)(A). The section also authorizes LEAs to use part B funds for school-wide programs, except that the amount of part B funds that may be used is limited to the number of disabled children in the school multiplied by the per child allotment.

Section 613 contains two provisions concerning how charter schools can use part B funds to serve children with disabilities. First, charter schools that are LEAs may not be required to apply for part B funds jointly with other LEAs unless State law specifies otherwise. Second, in situations where charter schools are within an LEA, the bill directs LEAs to serve children with disabilities attending charter schools in the same manner as it serves children with disabilities in its other schools and directs LEAs to provide part B funds to charter schools in the same manner they provide such funds to other schools. The Committee expects that charter schools will be in full compliance with Part B.

Section 613 also provides that the State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

Evaluations, eligibility determinations, IEPs, and placements section 614

The bill consolidates in section 614 all interrelated provisions regarding the evaluation and reevaluation of children with disabilities and the development, review, and revision of individualized education programs (IEPs) for these children. Most of these provisions are current law, as it is expressed in statute, regulations, and other regulatory guidance and policies from the U.S. Department of Education. The Committee anticipates that the consolidation of these provisions in one section, and the clarification of procedural and administrative requirements associated with them, will reduce the burdens imposed by the interpretations of current law and make the requirements more understandable. The Committee expects that these particular amendments will facilitate State and local implementation of, and compliance with, these provisions.

Provisions on evaluation in section 614 codify the requirement that a full and individual initial comprehensive evaluation must be conducted before the provision of special education and related services; that the purposes of the initial evaluation are to determine whether a child is a child with a disability, and to determine the child's specific educational needs. The bill specifies that parents must provide informed consent before the initial evaluation of a child, but that such consent shall not be construed as consent for placement for the receipt of special education and related services. If a child's parents refuse consent for evaluation, an LEA may continue to pursue an evaluation by using the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent.

Reevaluations are to be conducted if conditions warrant a reevaluation or if the child's parents or teacher requests a reevaluation, but at least once every three years. Informed parental consent also must be obtained for reevaluations, except that such informed consent need not be obtained if the LEA can demonstrate that it has taken reasonable steps to obtain consent and the child's parents have failed to respond.

The bill requires that, in conducting evaluations, the LEA: (1) use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information from the child's parents, to establish the child's eligibility and to determine the content of the child's IEP, including information relating to enabling the child to be involved in and progress in the general education curriculum; (2) not use any single procedure as the sole criterion for determining a child's eligibility or for determining an appropriate educational program for the child; and (3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

In addition, the bill requires an LEA to ensure that: (1) tests and other evaluation materials used to assess a child are selected and administered so as not to be racially or culturally discriminatory, and are administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; (2) any standardized tests given to the child have been validated for the specific purpose for which they are used; are administered by trained and knowledgeable personnel; and are administered in accordance with the instructions provided by the producers of such tests; (3) the child is assessed in all areas of suspected disability; and (4) assessment tools and strategies provide relevant information that directly assists persons in determining the educational needs of the child. These requirements reflect current policy contained in current law and regulations, but now for the first time, the bill codifies them in one section of statute.

The Committee intends that professionals, who are involved in the evaluation of a child, give serious consideration at the conclusion of the evaluation process to other factors that might be affecting a child's performance. There are substantial numbers of children who are likely to be identified as disabled because they have not previously received proper academic support. Such a child often is identified as learning disabled, because the child has not been taught, in an appropriate or effective manner for the child, the core skill of reading. Other cases might include children who have limited English proficiency. Therefore, in making the determination of a child's eligibility, the bill states that a child shall not be determined to be a child with a disability if the determinant factor for such a determination is lack of instruction in reading or math or limited English proficiency. The Committee believes this provision will lead to fewer children being improperly included in special education programs where their actual educational difficulties stem from another cause and that this will lead schools to focus greater attention on these subjects in the early grades.

The bill specifies that the determination of a child's eligibility is to be made by a qualified team of professionals and the child's parents. The bill requires that a copy of the evaluation report and the documentation of the child's eligibility determination be given to the child's parents.

One of the most significant changes in the bill relates to how the evaluation process should be viewed. For example, over the years, the required three year reevaluation has become a highly paperwork-intensive process, driven as much by concern for compliance with the letter of the law, as by the need for additional evaluation information about a child. The Committee believes that a child should not be subjected to unnecessary tests and assessments if the child's disability has not changed over the three-year time period, and the LEA should not be saddled with associated expenses unnecessarily. If there is no need to collect additional information about a child's continuing eligibility for special education, any necessary evaluation activities should focus on collecting information about how to teach and assist the child in the way he or she is most capable of learning.

Thus, provisions in the bill require that existing evaluation data on a child be reviewed to determine if any other data are needed to make decisions about a child's eligibility and services. If it is determined by the IEP Team and other qualified professionals that additional data are not needed, the parents must be so notified of the determination that no additional data are needed, the reasons for it, and of the parents' right to still request an evaluation. Unlike current law, however, no further evaluations will be required at that time unless requested by the parents.

To assist in improved compliance with the IEP provisions, the Committee placed all provisions pertaining to the IEP, including the definitions of the IEP and the IEP Team, in section 614(d). The definition of the Individualized Education Program (IEP) includes all of the required elements of an IEP, beginning with a statement of a child's present levels of educational performance, including how the child's disability affects the child's involvement and progress in the general education curriculum, or for a preschool child with a disability, how the child's disability affects the child's participation in appropriate activities. The IEP should also address the unique needs of the child that arise out of their disability that must be addressed in order for the child to progress in the general education curriculum, such as the need of a blind child to read Braille, or of a cognitively-disabled child to receive transportation training (i.e., how to use public transportation). The Committee wishes to emphasize that, once a child has been identified as being eligible for special education, the connection between special education and related services and the child's opportunity to experience and benefit from the general education curriculum should be strengthened. The majority of children identified as eligible for special education and related services are capable of participating in the general education curriculum to varying degrees with some adaptations and modifications. This provision is intended to ensure that children's special education and related services are in addition to and are affected by the general education curriculum, not separate from it.

The new emphasis on participation in the general education curriculum is not intended by the Committee to result in major expansions in the size of the IEP of dozens of pages of detailed goals and benchmarks or objectives in every curricular content standard or skill. The new focus is intended to produce attention to the accommodations and adjustments necessary for disabled children to access the general education curriculum and the special services which may be necessary for appropriate participation in particular areas of the curriculum due to the nature of the disability.

Specific day to day adjustments in instructional methods and approaches that are made by either a regular or special education teacher to assist a disabled child to achieve his or her annual goals would not normally require action by the child's IEP Team. However, if changes are contemplated in the child's measurable annual goals, benchmarks, or short term objectives, or in any of the services or program modifications, or other components described in the child's IEP, the LEA must ensure that the child's IEP Team is reconvened in a timely manner to address those changes.

The bill requires that a child's IEP include a statement of measurable annual goals, including benchmarks or short-term objectives. The Committee views this requirement as crucial. It will help parents and educators determine if the goals can reasonably be met during the year, and as important, allow parents to be able to monitor their child's progress. The bill requires that annual goals included in a child's IEP relate to "meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general education curriculum." This language should not be construed to be a basis for excluding a child with a disability who is unable to learn at the same level or rate as nondisabled children in an inclusive classroom or program. It is intended to require that the IEP's annual goals focus on how the child's needs resulting from his or her disability can be addressed so that the child can participate, at the individually appropriate level, in the general curriculum offered to all students.

Prior to the enactment of P.L. 94–142 in 1975, the opportunity and inclination to educate children with disabilities was often in separate programs and schools away from children without disabilities. The law and this bill contain a presumption that children with disabilities are to be educated in regular classes. Therefore, the legislation requires that the IEP include an explanation of the extent, if any, to which a child with a disability will not participate with nondisabled children in the regular class and in the general education curriculum including extra-curricular and non-academic activities.

This Committee recognizes that every decision made for a child with a disability must be made on the basis of what that individual child needs. Every child is unique and so will be his or her program needs. Nonetheless, when the decision is made to educate the child separately, an explanation of that decision will need, at a minimum, to be stated as part of the child's IEP.

Children with disabilities must be included in State and districtwide assessments of student progress with individual modifications and accommodations as needed. Thus, the bill requires that the IEP include a statement of any individual modifications in the administration of State and districtwide assessments. The Committee knows that excluding children with disabilities from these assessments severely limits and in some cases prevents children with disabilities, through no fault of their own, from continuing on to postsecondary education. The bill requires that if the IEP team determines that the child's performance cannot appropriately be assessed with the regular education assessments, even with individual modifications, the IEP must include a statement of why the assessment is not appropriate and alternative assessments must be made available. The Committee reaffirms the existing Federal law requirement that children with disabilities participate in State and district-wide assessments. This will assist parents in judging if their child is improving with regard to his or her academic achievement, just as the parents of nondisabled children do.

As under current law, a child's IEP must include a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child. The Committee intends that, while teaching and related services methodoiogies or approaches are an appropriate topic for discussion and consideration by the IEP Team during IEP development or annual review, they are not expected to be written into the IEP. Furthermore, the Committee does not intend that changing particular methods or approaches necessitates an additional meeting of the IEP Team. Additionally, the Committee is aware of, and endorses, the provision in Section 300.350 of the current regulations relating to personal accountability. That regulation provides that each public agency must provide special education and related services to a child with a disability in accordance with an IEP. However, part B does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

The location where special education and related services will be provided to a child influences decisions about the nature and amount of these services and when they should be provided to a child. For example, the appropriate place for the related service may be the regular classroom, so that the child does not have to choose between a needed service and the regular educational program. For this reason, in the bill the Committee has added "location" to the provision in the IEP that includes "the projected date for the beginning of services and modifications, and the anticipated frequency, *location*, and duration of those services."

The bill requires that the IEP include, beginning at age fourteen, "a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced placement courses or a vocational education program)". The purpose of this requirement is to focus attention on how the child's educational program can be planned to help the child make a successful transition to his or her goals for life after secondary school. This provision is designed to augment, and not replace, the separate transition services requirement, under which children with disabilities beginning no later than age sixteen receive transition services including instruction, community experiences, the development of employment and other post-school objectives and, when appropriate, independent living skills and functional vocational evaluation. For example, for a child whose transition goal is a job, a transition service could be teaching the child how to get to the job site on public transportation.

Current law is not clear on what is required when a child with a disability attains the age of majority. In order to clarify the situation, the IEP definition in the bill includes a statement that the child has been informed of his or her rights under part B, if any, that will transfer to the child when he or she attains the age of majority. The bill clarifies that when a child is considered incapable of making educational decisions, the State will develop procedures for appointing the parent or another individual to represent the interests of the child. This transfer of rights is also addressed under section 615(m) in the bill.

Additionally, the bill requires that a child's IEP include a statement of how the child's progress toward the annual goals will be measured and how the child's parents will be regularly informed of the child's progress toward those goals (by such means as report cards) as often as parents are informed of their nondisabled children's progress. The Committee believes that informing parents of children with disabilities as often as other parents will, in fact, reduce the cost of informing parents of children with disabilities and facilitate more useful feedback on their child's performance. One method recommended by the Committee would be by providing an IEP report card with the general education report card, if the latter is appropriate and provided for the child.

An IEP report card could also be made more useful by including checkboxes or equivalent options that enable the parents and the special educator to review and judge the performance of the child.

An example would be to state a goal or benchmark on the IEP report card and rank it on a multi-point continuum. The goal might be, "Ted will demonstrate effective literal comprehension." The ranking system would then state the following, as indicated by a checkbox: No progress; some progress; good progress; almost complete; completed. Of course, these concepts would be used by the school and the IEP Team when appropriate. This example is not intended to indicate the Committee's preference for a single means of compliance with this requirement.

The bill's definition of the Individualized Education Program (IEP) includes the parents of a child with a disability; at least one regular education teacher of such child (if the child is, or may be, participating in the regular education environment); at least one special education teacher, or where appropriate, at least one special education provider of such child; a representative of the local educational agency who is (a) qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (b) knowledgeable about the general curriculum; and (c) knowledgeable about the availability of resources of the local educational agency; an individual who can interpret the instructional implications of evaluation results, who may be a member of the team; at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and whenever appropriate, the child with a disability. Very often, regular education teachers play a central role in the education of children with disabilities. In that regard the bill provides that regular education teacher participate on the IEP Team, but this provision is to be construed in light of the bill's proviso that the regular education teacher, to the extent appropriate, participate in the development of the IEP of the child. The Committee recognizes the reasonable concern that the provision including the regular education teacher might create an obligation that the teacher participate in all aspects of the IEP Team's work. The Committee does not intend that to be the case and only intends it to be to the extent appropriate. The Committee wishes to emphasize that the "support" for school personnel, that is stated in the child's IEP is that support that will assist them to help a particular child progress in the general education curriculum.

Related services personnel should be included on the team when a particular related service will be discussed at the request of a child's parents or the school. Such personnel can include personnel knowledgeable about services that are not strictly special education services, such as specialists in curriculum content areas such as reading. Furthermore, the Committee recognizes that there are situations that merit the presence of a licensed registered school nurse on the IEP Team. The Committee also recognizes that schools sometimes are assumed to be responsible for all health-care costs connected to a child's participation in school. The Committee wishes to encourage, to the greatest extent practicable and when appropriate, the participation of a licensed registered school nurse on the IEP Team to help define and make decisions about how to safely address a child's educationally-related health needs.

The bill also clarifies obligations in two areas. First, nothing in section 614 may be construed to require the IEP Team to include information under one component of a child's IEP that is already contained in another component. Second, section 614 requires that each LEA or State educational agency ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child. The Committee expects that the majority of placement decisions will be made by the IEP Team, but in those unique cases where it is not, the Committee expects parents to be involved in the group making the decision.

The bill requires that, at the beginning of every school year, an IEP be in effect for each child with a disability served by an LEA, a State agency, or an SEA. In the case of a child with a disability aged 3 though 5 (or at the discretion of the State educational agency, a 2 year-old child with a disability who will turn age 3 during the school year), an individualized family service plan that contains the requirements described in section 636, and that is developed in accordance with section 614, may serve as the child's IEP if using that plan as the IEP is consistent with State policy and agreed to by the agency and the child's parents.

The bill specifies that the LEA shall ensure that a child's IEP Team review a child's IEP periodically, but not less than annually to determine whether the annual goals of the child are being achieved; and revises the IEP as appropriate to address: (1) any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate; (2) the results of any reevaluation; (3) information provided by or to the parents; (4) the child's anticipated needs; or (5) other matters.

With regard to transition services in IEPs, the bill provides that if an agency, other than the LEA, participating in the child's education fails to provide the transition services described in the child's IEP, the LEA must reconvene the IEP Team to identify alternative strategies to meet the child's transition objectives.

In developing a child's IEP, the bill requires that the IEP Team consider the strengths of the child and the concerns of the parents for enhancing the education of their child; and the results of the initial evaluation or most recent evaluation of the child. In addition, the Committee believes that a number of considerations are essential to the process of creating a child's IEP. The purpose of the IEP is to tailor the education to the child; not tailor the child to the education. If the child could fit into the school's general education program without assistance, special education would not be necessary.

The bill provides that, in the case of a child whose behavior impedes the learning of the child or others, the IEP Team, as appropriate, shall consider strategies, including positive behavior interventions strategies and supports, to address that behavior. Similarly, in the case of a child with limited English proficiency, the IEP Team is to consider the language needs of the child as such needs relate to the child's IEP. In the case of a child who is blind or visually impaired, the IEP team must provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child.

The Team also is to consider the communication needs of the child in order to ensure that local educational agencies better understand the unique needs of children who are deaf or hard of hearing; section 614(d)(3)(B)(iv) includes special factors that must be considered in developing IEPs for these children. The policy included in the bill provides that, in the case of the child who is deaf or hard of hearing, the IEP Team must consider the language and communication needs of the child; opportunities for direct communication with peers and professional personnel in the child's language and communication mode; the child's academic level; and the child's full range of needs, including the child's social, emotional, and cultural needs and opportunities for direct instruction in the child's language and communication mode. The Committee also intends that this provision will be implemented in a manner consistent with the policy guidance entitled "Deaf Students Education Services," published in the Federal Register (57 Fed. Reg. 49274, October 30, 1992) by the U.S. Department of Education.

The bill further requires that the IEP Team consider the provision of assistive technology devices and services when developing the child's IEP.

Procedural Safeguards Section 615

The procedural safeguards in the IDEA have historically provided the foundation for ensuring access to a free appropriate public education for children with disabilities. Key to these due process procedures is the law's "stay put" provision, which this bill retains. The Committee has added clarifications to the procedural safeguard provisions to facilitate conflict resolution, describe how schools may discipline children with disabilities, and ensure that due process is useful for all parents and schools.

The bill retains all provisions concerning the opportunity to use, and the administrative procedures associated with, an impartial due process hearing, and appeals through State-level reviews, and the courts, as well as certain existing exceptions to reductions in attorneys' fees.

The bill simplifies the process of delivering, and the content of, notices to parents about their child's rights. The Committee hopes that these provisions will result in user-friendly information that parents can understand.

In section 615 of the bill provisions affecting possible reduction of attorneys' fees to prevailing parents are retained from current law. A provision has been added that would allow parents' attorneys' fees to be reduced, if the attorney representing the parents did not provide the LEA with specific information about the child and the basis of the dispute; specifically: (1) the name of the child, the address of the residence of the child, and the name of the school the child is attending; (2) a description of the nature of the problem of the child relating to the proposed initiation or change, including facts relating to that problem; and (3) a proposed resolution of the problem, to the extent known and available to the parents at the time. The Committee believes that the addition of this provision will facilitate an early opportunity for schools and parents to develop a common frame of reference about problems and potential problems that may remove the need to proceed to due process and instead foster a partnership to resolve problems.

The Committee believes that the IEP process should be devoted to determining the needs of the child and planning for the child's education with parents and school personnel. To that end, the bill specifically excludes the payment of attorneys' fees for attorney participation in IEP meetings, unless such meetings are convened as a result of an administrative proceeding or judicial action.

Questions have been raised regarding the relationship between the extent of success of the parents and the amount of attorneys' fees a court may award. In addressing this question, the Committee believes the amount of any award of attorneys' fees to a prevailing party under part B shall be determined in accordance with the law established by the Supreme Court in *Hensley* v. *Eckerhart*, 461 U.S. 424 (1983) and its progeny.

As we stated in the 1986 report accompanying the legislation that added the attorneys fees provisions: "It is the committee's intent that the terms 'prevailing party' and 'reasonable' be construed consistent with the U.S. Supreme Court's decision in *Hensley* v. *Eckerhart*, 461 U.S. 424, 440 (1983). In this case, the Court held that:

> the extent of a plaintiff's success is a crucial factor in determining the proper amount of an award of attorney's fees. Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee. Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fees reduced simply because the district court did not adopt each contention raised. But where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained.

To encourage early resolution of problems whenever possible, section 615 requires States to offer mediation as a voluntary option to parents and LEAs as an initial process for resolving disputes. However, the bill requires that a State's mediation system may not be used to delay or deny a parents right to due process. The bill allows SEAs and LEAs to establish procedures to require parents who choose not to engage in mediation to meet, at a time and place convenient for them, with a disinterested party who would encourage and explain the benefits of mediation. This individual would be under contract with either a Parent Training and Information Center funded under part D or an alternative dispute resolution entity.

The Committee believes that, in States where mediation is now offered, mediation is proving successful both with and without the use of attorneys. Thus, the Committee wishes to respect the individual State procedures with regard to attorney use in mediation, and therefore, neither requires nor prohibits the use of attorneys in mediation. The Committee is aware that, in States where mediation is being used, litigation has been reduced, and parents and schools have resolved their differences amicably, making decisions with the child's best interest in mind. It is the Committee's strong preference that mediation become the norm for resolving disputes under IDEA. The Committee believes that the availability of mediation will ensure that far fewer conflicts will proceed to the next procedural steps, formal due process and litigation, outcomes that the Committee believes should be avoided when possible. Section 615(e)(2)(B) of the bill provides that the State shall maintain a list of individuals who are qualified mediators. The Committee intends that, whenever such a mediator is not selected on a random basis from that list, both the parents and the agency are involved in selecting the mediator, and are in agreement with the individual who is selected. The Committee further intends that any individual who serves as an impartial mediator under part B of IDEA is not an employee of any local educational agency or State agency described in section 613(h), and is not a person having a personal or professional conflict of interest. Individuals who serve as mediators under part C of this bill are expected to be selected in the same manner described in this paragraph and to meet the same criteria of impartiality with respect to employment in the lead agency and not having a personal and professional conflict of interest. The Committee believes that mediators be experienced, trained, and understand the law, the Committee clearly does not intend that all mediators be attorneys. Section 615 also specifies that a State will bear the cost of mediation.

The legislation requires that agreements reached in mediation shall be put in writing. Furthermore, the amendments require that discussions held in mediation would be confidential and could not be used as evidence in any subsequent due process hearing or civil action. However, the Committee intends that nothing in this bill shall supersede any parental access rights under the Family Educational Rights and Privacy Act of 1974 or foreclose access to information otherwise available to the parties. Mediation parties may enter into a confidentiality pledge or agreement prior to the commencement of mediation. An example of such an agreement follows:

> a. The mediator, the parties, and their attorneys agree that they are all strictly prohibited from revealing to anyone, including a judge, administrative hearing officer or arbitrator the content of any discussions which take place during the mediation process. This includes statements made, settlement proposals made or rejected, evaluations regarding the parties, their good faith, and the reasons a resolution was not achieved, if that be the case. This does not prohibit the parties from discussing information, on a need-to-know basis, with appropriate staff, professional advisors, and witnesses.
>
> b. The parties and their attorneys agree that they will not at any time, before, during, or after mediation, call the mediator or anyone associated with the mediator as a witness in any judicial, administrative, or arbitration proceeding concerning this dispute.
>
> c. The parties and their attorneys agree not to subpoena or demand the production of any records, notes, work product, or the like of mediator in any judicial, administrative, or arbitration proceeding concerning this dispute.
>
> d. If, at a later time, either party decides to subpoena the mediator or the mediator's records, the mediator will move to quash the subpoena. The party making the demand agrees to reimburse the mediator for all expenses incurred, including attorney fees, plus mediator's then-current hourly rate for all time taken by the matter.
>
> e. The exception to the above is that this agreement to mediate and any written agreement made and signed by the parties as a result of mediation may be used in any relevant proceeding, unless the parties agree in writing not to do so. Information which would otherwise be subject to discovery, shall not become exempt from discovery by virtue of it being disclosed during mediation.

Section 615 adds a provision that requires that five business days prior to a due process hearing, each party disclose to other parties all evaluations completed by that date and recommendations associated with those evaluations that are to be used at the hearing. If any party fails to provide such information within the time specified in the bill, the hearing officer may bar that party from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Section 615(j) provides that, except as provided in 615(k)(7), during the pendency of any proceedings conducted pursuant to section 615, unless the State or LEA and the parents otherwise agree, the child shall remain in the then current educational placement of such child, or if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program, until all such proceedings have been completed.

The Committee recognizes that school safety is important to educators and parents. There has been considerable debate and concern about both if and how those few children with disabilities who affect the school safety of peers, teachers, and themselves may be disciplined when they engage in behaviors that jeopardize such safety. In addition, the Committee is aware of the perception of a lack of parity when making decisions about disciplining children with and without disabilities who violate the same school rule or code of conduct. By adding a new section 615(k) to IDEA, the Committee has attempted to strike a careful balance between the LEA's duty to ensure that school environments are safe and conducive to learning for all children, including children with disabilities, and the LEA's continuing obligation to ensure that children with disabilities receive a free appropriate public education (FAPE). Thus, drawing on testimony, experience, and common sense, the Committee has placed specific and comprehensive guidelines on the matter of disciplining children with disabilities in this section.

It is the Committee's intent that this set of practical and balanced guidelines reinforce and clarify the understanding of Federal policy on this matter, which is currently found in the statute, case law, regulations, and informal policy guidance. By placing all pertinent guidance in one place, the Committee anticipates that educators will have a better understanding of their areas of discretion in disciplining children with disabilities and that parents will have a better understanding of the protections available to their children with disabilities.

The bill codifies current law by allowing school personnel to order a change in the placement of a child with a disability to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities). The bill also provides two exceptions to the pendency provision under section 615(j). First, the bill allows school personnel to order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days, if the child carries a weapon to school or to a school function under the jurisdiction of a State or an LEA: or the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or an LEA.

The appropriate interim alternative educational setting shall be determined by the IEP team.

The bill requires that, either before or not later than 10 days after taking such a disciplinary action, if the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension, the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or if the child already has a behavior intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior.

Under the second exception to the pendency provision, a impartial hearing officer is permitted to order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the impartial hearing officer determines at the hearing that the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others; considers the appropriateness of the child's current placement; considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and determines that the interim alternative educational setting enables the child to continue to participate in the general education curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and includes services and modifications designed to address the behavior so that it does not recur.

The standard "substantially likely to result in injury to the child or others" codifies the standard established by the Supreme Court in *Honig* v. *Doe*. The bill requires the impartial hearing officer to consider the appropriateness of the child's placement and efforts by the school district to minimize the risk of harm in the child's current placement, including through use of supplementary aids and services. If the school district has failed to provide the child an appropriate placement or to make reasonable efforts to minimize the risk of harm, the appropriate response by an impartial hearing officer is to deny the school district's request to move the child to an alternative setting and to require the district to provide an appropriate placement and make reasonable efforts to minimize the risk of harm. Thus, it will not be permissible to move a child when the child's behavior can be addressed in the current placement.

Section 615(k)(10)(C) defines the term "substantial evidence" as used in section 615(k). The term means evidence that is beyond preponderance of the evidence. The standard in 615(k)(2)(A) that maintaining a child in the current placement is substantially likely to result in injury to the child or others codifies the standard set by the Supreme Court in *Honig* v. *Doe*.

The bill requires that, if a disciplinary action is contemplated as described in the preceding paragraphs for a behavior of a child with disability or if a disciplinary action involving a change in placement for more than 10 school days for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children, not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under section 615 of IDEA. In addition, immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action, a review shall be conducted by the IEP Team and other qualified personnel of the relationship between the child's disability and the behavior subject to the disciplinary action.

The bill allows for a change of setting for the educational services provided a child with disabilities in the two specific circumstances identified above, but it does not change the other requirements of the Act. The bill describes the standards that that setting—the interim alternative educational setting—must meet. It must be a setting, although a different setting, where the child can continue to participate in the general curriculum, and continue to receive the general curriculum services and modifications, including those in the child's current IEP, so that the child can meet the goals of that IEP, and it must include services or modifications designed to address (so that it does not recur) the behavior that led to the child's placement in the interim alternative educational setting.

The bill prescribes the relevant information that must be considered by the IEP Team in carrying out a review in terms of the behavior subject to the disciplinary action—all relevant information, including evaluation and diagnostic results, including relevant information supplied by the parents, observations of the child, and the child's IEP and placement. The Committee limits the scope of this review by including the phrases "in relationship to the behavior subject to disciplinary action" and "behavior subject to disciplinary action".

In addition, this section prescribes, also in terms of the behavior subject to disciplinary action, the standards for determining whether or not the behavior of the child was a manifestation of the child's disability:

The IEP Team must determine that—

(1) in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate, and special education and related services, and supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

(2) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

(3) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

The Committee offers the following clarification with respect to the first standard in section 615(k)(4)(C)(ii). This standard recognizes that where there is a relationship between a child's behavior and the failure to provide or implement an IEP or placement, the IEP Team must conclude that the behavior was a manifestation of the child's disability. Similarly, where the IEP Team determines that an appropriate placement and IEP were provided, the IEP Team must then determine that the remaining two standards have been satisfied. This section is not intended to require an IEP Team to find that a child's behavior was a manifestation of a child's disability based on a technical violation of the IEP or placement requirements that are unrelated to the educational/behavior needs of the child.

Section 615(k)(5) of the legislation codifies current law, which permits a public agency to apply to a child whose behavior is not a manifestation of the child's disability the same disciplinary procedures that apply to children without disabilities. This section must be construed in light of the Act's obligation not to terminate services to children with disabilities and the pendency provision. A child with a disability would not be subject to disciplinary action for behavior that was a manifestation of the child's disability.

To promote the timely sharing of relevant information, section 615(k) of the bill requires that, if the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

The Committee also addresses parents' appeal options in section 615(k) of the bill. If parents disagree with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parents may request a hearing. In such a case, the State or LEA shall arrange for an expedited hearing.

In reviewing a decision with respect to the manifestation determination in an expedited hearing, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of such child's disability consistent with the requirements of paragraph(4)(C), used by an IEP Team when determining whether a behavior is or is not a manifestation of the disability. That is, the hearing officer in an expedited hearing, would determine that (1) in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate, and special education services and related services, supplementary aids and services, and behavior intervention strategies were consistent with the child's IEP; (2) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and (3) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

The bill requires that, before a hearing officer in an expedited due process hearing selects an interim alternative educational setting for a child, the officer is to determine if the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others; consider the appropriateness of the child's current placement; consider whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and determines that the interim alternative educational setting meets these requirements: (1) it enables the child to continue to participate in the general education curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and (2) includes services and modifications designed to address the behavior subject to discipline so that it does not recur.

When parents request a hearing regarding a disciplinary action with respect to weapons, illegal drugs, or a controlled substance or actions that are substantially likely to result in injury to the child or others or to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for (i.e., the same amount of time that a child without a disability would be subject to discipline but not more than 45 days) in section 615(1)(A)(ii) or (2) of the bill, whichever occurs first, unless the parents and the State or LEA agree otherwise.

If a child is placed in an interim alternative educational setting for the reasons described in Section 615(k)(1)(A)(ii) or (2) and school personnel propose to change the child's placement after expiration of the interim alternative educational placement, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (i.e., the child's placement prior to the interim alternative educational setting). In the bill the Committee allows an exception. If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative educational setting) during the pendency of the due process proceedings, the district may request an expedited hearing.

In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards set out above. That is, the officer is to: (1) determine if the public agency has demonstrated by substantial evidence that permitting the child to return to his or her current placement (the child's placement prior to the interim alternative educational setting) is substantially likely to result in injury to the child or to others; (2) consider the appropriateness of the child's current placement (the child's placement prior to the interim alternative educational setting); (3) consider whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement (the child's placement prior to the interim alternative educational setting), including the use of supplementary aids and services; and (4) determine that the continued use of an interim alternative educational setting meets these requirements: (a) enables the child to continue to participate in the general education curriculum, although in another setting other than the original placement, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and (b) includes services and modifications designed to address the behavior subject to discipline so that it does not recur.

In the bill, the Committee addresses the issue of disciplining children not yet eligible under part B of the IDEA and discipline. A child who has not been determined to be eligible for special education and related services under part B and who has engaged in behavior that violated any rule or code of conduct of the LEA may assert any of the protections provided for in part B of IDEA, if the LEA had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. An LEA shall be deemed to have had knowledge that a child is a child with a disability if the parents of the child have expressed concern in writing (unless the parents are illiterate or have a disability that prevents compliance with the requirements of this clause) to personnel of the appropriate educational agency that the child needs special education and related services; the behavior or performance of the child demonstrates the need for such services; the parent of the child has requested an evaluation of the child under section 614, or the child's teacher, or other LEA personnel, has expressed concern about the behavior or performance of the child to the director of special education or to other agency personnel.

If an LEA does not have knowledge, or could not reasonably have known, that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to children without disabilities, who engaged in comparable behaviors, consistent with section 615(k)(2) pertaining to the authority of a hearing officer.

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with part B, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

In the bill, the Committee clarifies that nothing in part B shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability. An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

To ensure uniformity in the application of the provisions that have safety implications in section 615(k), the terms "controlled substance," "illegal drug," and "weapon" have been defined in the bill. "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)). The term "illegal drug" means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)), but does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substance Act or under any other provision of Federal law. "Weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.

Withholding and judicial review section 616

The Committee recognizes and fully expects that the Secretary will utilize the broad enforcement authority available for ensuring compliance with and implementation by State educational agencies with the applicable provisions of part B. The bill authorizes the Secretary to withhold part B funds, in whole or in part, from States that are not in compliance with part B. Thus, based on the nature and degree of noncompliance, the Secretary may determine the level of funding to be withheld and the type of funding to withhold (e.g., the entire State set-aside or the set-aside for administrative purposes).

The Committee expects the Secretary to initiate actions to ensure enforcement, including the reexamination of current Federal monitoring and compliance procedures to improve the implementation of the law, and a subsequent annual report to Congress which evaluates the impact of the improved procedures on compliance. The committee also expects that the Secretary's reexamination of current enforcement procedures will place strong emphasis on: (1) including parents in the state monitoring process; (2) focusing monitoring efforts on the issues that are most critical to ensuring appropriate education to children with disabilities, and (3) timely follow-up to ensure that a State has taken appropriate action to demonstrate compliance with the law.

In addition, the Secretary may initiate other actions to ensure enforcement, such as requiring the State to submit a detailed plan for achieving compliance, imposing special considerations on the State's part B grant, referring the matter to the Department of Justice for appropriate enforcement action, and other enforcement actions authorized by law.

The Committee has included an express reference "referral to the Department of Justice" in section 616(a)(1)(B) to the authority now in current law of the Department of Education to refer instances of non-compliance to other agencies. In reiterating this authority, the Committee does not intend to expand present enforcement powers of any other Department, nor establish any new rights of action against State or local governments, education agencies, or private parties.

Similar enforcement authorities exist for States to ensure that local educational agencies meet their responsibilities under the Individuals with Disabilities Education Act.

Data collection section 618

The legislation substantially streamlines the current data collection requirements by eliminating reporting on the services needed, by disability category, for children leaving the educational system, and the number and type of personnel employed and data on current and project personnel needs. New reporting requirements are added in the bill for: the number of children moved to interim alternative educational settings, and the number of infants and toddlers at risk of developing developmental delays. The bill allows the Secretary of Education discretion to allow States and the Secretary of the Interior to collect needed data through sampling.

Because of the Committee's desire to see the problem of over identification of minority children addressed, the bill requires States provide for the collection and examination of data to determine if significant disproportionality based on race is occurring with respect to particular disability categories or types of educational setting.

The Preschool Program section 619

The legislation amends the section 619 Preschool Grants program to conform with the funding formula changes for the section 611 Grants to States program. Under the new formula, no State would receive less than it received in fiscal year 1997. Beginning in fiscal year 1998, all new appropriations above the FY 97 level will be 85 percent based on the general population of children aged 3 through 5, and 15 percent on the poverty rate in the State. The formula also includes the same minimum and maximum allocation provisions that apply to the new formula under the Grants to States program. These provisions ensure that every State receives part of any increase, and there is no radical shift in resources.

The legislation would eliminate funding for the Outlying Areas under the Preschool Grants program and add an amount equivalent to the amount they received in fiscal year 1997 to the fiscal year 1998 allocations the Outlying Areas would otherwise receive under the Grants to States program. This would maintain overall funding for the Outlying Areas while eliminating paperwork associated with their allocations under the Preschool Grants program, which is unduly burdensome for the Outlying Areas given the nominal amount of funding involved.

Unlike the Grant to States program, the new funding formula for Preschool Grants takes effect on July 1, 1998.

Amendments to part C of the Individuals with Disabilities Education Act

The bill reorganizes part H which authorizes the early intervention program as part C.

The Committee continues to recognize the importance of early intervention for infants and toddlers with disabilities from birth through age two. Infants and toddlers with disabilities whose families receive early intervention services often need less intensive services when they reach school age. The Committee believes that it is in the best interests of the infants and toddlers, their families, schools, and society in general that these services continue to be provided.

The bill retains current law and adds clarifications with regard to State discretion when it elects to address the needs of infants and toddlers at risk of having substantial developmental delays if they do not receive early intervention services. To provide greater flexibility in addressing the needs of "at-risk infants and toddlers" in those States not currently serving such children, the bill permits a State to use its part C funds for initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including: establishing linkages with public and private organizations, services and personnel for identifying and evaluating at-risk infants and toddlers; referring those children to other (nonpart C) services; and conducting periodic follow-ups on each referral to determine if the child's eligibility under part C has changed.

While the provision in the preceding paragraph, applies only to States that do not serve at-risk infants and toddlers under part C, States that are serving those infants and toddlers may carry out these activities as well, under the general authority to use part C funds to implement the components of statewide systems. The provision addressed in the preceding paragraph is intended to provide both clear authority and an incentive for States that are not serving at-risk infants and toddlers, not to penalize States that are already doing so.

The Committee has addressed the serious problem of personnel shortages in the provision of early intervention services. The bill adds a provision that allows that paraprofessionals and assistants, who are appropriately trained and supervised, in accordance with State law and regulations, or written policy, to assist in the provision of early intervention services to infants and toddlers with disabilities under part C. With regard to personnel standards, the bill, as does current law, clarifies that, to the extent that the standards met by providers of early intervention services in a State, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State is to have steps it is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State. In addition, the bill in part C clarifies this State responsibility in a manner that conforms to parallel language in part B.

The bill describes the assurances a State must submit as part of its application for funding under part C.

The bill clarifies that part C is truly the payer of last resort even for military families who are eligible for medical programs administered by the Department of Defense. The Committee does not intend to change the types of services that are currently covered by DOD programs nor expect that the services covered under DOD medical programs will change.

Changes are made to the provisions for submission of State applications, consistent with similar changes in part B.

The bill includes an authorization level for part C of $400,000,000. The Committee recognizes the effort, both fiscally and programmatically, that all States are making through Part C and the current federal/State partnership in this important effort.

Amendments to part D of the Individuals with Disabilities Education Act

Discretionary programs in IDEA, which fund personnel training, research, systemic change activities, parent training and information centers, technical assistance, and media and technology initiatives to assist children with disabilities, have evolved since the Act's original passing to cover a variety of particular needs. Many of these needs continue to this day, while others have receded.

Current law authorizes nineteen funded and unfunded discretionary programs. This legislation consolidates these programs into four broad areas. The Committee believes that by creating a refocused national program for discretionary programs, such programs will be more strategically able to assist States, and local communities, to maintain and improve their capacity to reach and serve infants, toddlers, and children with disabilities.

The Act creates a new part D, National Activities to Improve Education of Children with Disabilities. Subpart 1 of part D authorizes new State Program Improvement Grants. This subpart 1 establishes a new system of grants to improve results for children with disabilities through systemic reform with an emphasis on personnel training. State educational agencies, in close cooperation with their "contractual partners," local educational agencies, and parents of children with and without disabilities, individuals with disabilities, the Governor, and other State and local agencies, organizations, and institutions concerned with the needs of and services for children with disabilities shall develop an improvement plan after identifying the State's needs in several areas; these include assessing children with disabilities and their performance, training and personnel needs, and evaluating system effectiveness. States that receive these competitive grants will be able to use funds to implement the improvement strategies they have proposed in their plan which will be based on the needs of the State's children with disabilities and the nature of the State's capacity and methods of serving these children.

The legislation requires that 75% of State Improvement Grant funds be used for personnel training. This reflected the Committee's desire that subpart 1 grants be a primary means of supporting personnel training, complemented by an authorization for additional, but targeted, personnel training initiatives in subpart 2, chapter 1 of part D. The rationale for focusing personnel training funds at the State level through subpart 1, State Program Improvement Grants, is an attempt to improve results for children with disabilities through addressing personnel training needs of States, as identified and defined by a State, not the Federal government.

Under the current program, universities receive grants based on applications made to the Department of Education. These applications generally focus on pre-service training for special education teachers. In many States, the greatest need for training is for in-service training for general and special education teachers, and for pre-service training in addressing the special instructional needs of children with disabilities, including their integration regular education classes, for future general education personnel. The Committee believes that, by targeting State Program Improvement Grant funds as it has, appropriate training for teachers addressing the learning needs of children with disabilities, especially general education teachers in early grades, will help reduce inappropriate referrals to special education of learning disabled children and improve results for children with disabilities served by both general and special education personnel. Instead of learning from a teacher whose abilities cannot properly meet the child's particular needs, learning disabled children will have been taught in a manner that they can understand from a teacher whose training permitted them to understand that child's learning style.

In part D, subpart 2, the Committee authorizes Coordinated Research, Personnel Preparation, Technical Assistance, Support, and Dissemination of Information. The Committee intends that the new Chapter 1 National Research and Innovation Activities Program lead to a new coordinated effort in special education research and grant activities. Section 661 in the bill contains the administrative provisions. In this section the Secretary of Education is provided with both direction and flexibility that the Committee believes will facilitate the development of a comprehensive plan to guide the distribution of funds under subpart 2. Stake holders will have direct input in developing the plan. As in current law, in the bill each major grant competition requires peer review, to promote the selection of high quality applications for funding who will be responsive to the needs identified in a particular competition. The Committee intends that the Secretary's planning process establish a new coordinated system of funding to reflect what the stake holders collectively view as funding priorities.

The bill authorizes research and targeted personnel training activities. The bill provides wide flexibility in terms of funding for research, distinguishing among funding for knowledge production, integration of research knowledge and practice, and the use of professional knowledge. The Committee believes strongly that an organized, collective commitment to get validated research—best practice information—to the teacher in the classroom is essential. Thus, the Committee anticipates the substance and organization of the provisions pertaining to research will facilitate such an outcome.

The bill authorizes funding for targeted personnel preparation activities related preparing personnel to serve children with low-incidence and high incidence disabilities, leadership personnel, and projects of national significance. The focus of the latter projects will be to develop and demonstrate effective and efficient practices; to apply research findings in personnel preparation, demonstrate effective models for preparing personnel; reducing shortages of personnel, and developing, evaluating, and disseminating model teaching standards; as well as to develop and disseminate models that prepare teachers with strategies, including behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others; to fund institutes for professional development, activities promoting the transfer of certification requirements across States; and selected other activities, including projects to improve the ability of general education personnel—teachers, principals, and administrators—to meet the needs of children with disabilities. The bill specifies that high-incidence personnel preparation activities, including those conducted by local educational agencies and other local entities, are to address improvement and reform of existing training programs and the incorporation of best-practices and research-based knowledge into these training programs.

The bill directs the Secretary to undertake a national assessment of the Nation's systems of providing services to infants, toddlers, and children with disabilities and their families. The Secretary is to prepare recommendations for improving these systems in a fashion that will be useful to the 107th Congress, as it considers the effectiveness of these amendments in improving services for children with disabilities and whether further changes are needed. In addition, the Secretary is authorized to conduct longitudinal studies and to provide technical assistance directly to local educational agencies.

The bill retains the authority, substantially unchanged from current law, to fund the Parent Training and Information Centers. The bill adds authority to fund local parent organizations, referred to in the bill as "community parent resource centers," to receive funding. The Committee recognizes the substantial contribution that State Parent Training and Information Centers, and local parent organizations have made, in educating parents about the IDEA, and especially in responding to parents of diverse racial, cultural, and linguistic backgrounds. The Committee anticipates that, by working in tandem, the State-level and community-based grantees will be able to reach even more parents many of whom are isolated by geographic, social, language, cultural, or racial factors.

The bill retains the authority for the Secretary to fund Regional Resource Centers and clearinghouses, and other programs to help State and local entities build capacity to serve infants, toddlers, and children with disabilities and their families. It also retains the Secretary's authority to fund systemic technical assistance to assist with the implementation of State program improvement grants, promoting change through multistate and regional frameworks that benefit State and local educational agencies, and the collection and dissemination to a wide range of stake holder audiences.

The bill retains the authority of the Secretary to fund projects related to the development, demonstration, and use of technology. It also retains the authority to fund educational media services. The authority extends to support for video description, open captioning, and closed captioning of television programs, videos, or educational materials. On October 1, 2001, such support will cover video description, open captioning, and close captioning of educational, news, and informational television, videos, or materials. By that point, the Committee anticipates that the transition toward privately financed captioning of all broadcast television will be well under way, because of the publication of, and expected compliance with, the Federal Communication Commission's regulations on the subject in August 1997.

TITLE II—MISCELLANEOUS PROVISIONS

Title II repeals and extends provisions of the IDEA consistent with the amendments in Title I of the bill. Title II also provides that most amendments to parts A and B will be effective on the date of enactment. It provides that part C and sections 612(a)(4), 612(a)(14), 612(a)(16), 614(d) (except for paragraph (6)), and 618 of part B will be effective on July 1, 1998. It provides that amendments to part D, the new discretionary programs, and section 617 of part B will take effect October 1, 1997 consistent with the start of the Federal fiscal year 1998.

Title II establishes that section 618 of IDEA as in effect on the day before enactment, and the provisions of parts A and B of IDEA relating to IEPs and the State's comprehensive system of personnel development, as so in effect, shall remain in effect until July 1, 1998. It provides that beginning on October 1, 1997, the Secretary of Education may use funds appropriated under part D of IDEA as in effect on the day prior to enactment to make continuation awards for projects that were funded under section 618 and parts C through G of IDEA as in effect on September 30, 1997. Part I, the Family Support Program, will be authorized through September 30, 1998 as part of IDEA.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill permits this title to be cited as the 'Individuals with Disabilities Education Act Amendments of 1997'.

Section 101 of the bill amends the current provisions of the Individuals with Disabilities Education Act to read as follows:

"PART A

"Section 601 contains the short title of the Act, the Table of Contents, the findings, and the purposes.

"Section 602 defines the key terms used in this title, including: Assistive Technology Device, Assistive Technology Service, Child with a Disability, Educational Service Agency, Elementary School, Equipment, Excess Costs, Free Appropriate Public Education, Indian, Indian Tribe, Individualized Education Program, Individualized Family Service Plan, Infant or Toddler with a Disability, Institution of Higher Education, Local Educational Agency, Native Language, Nonprofit, Outlying Areas, Parent, Parent Organization, Parent Information and Training Center, Related Services, Secondary School, Secretary, Special Education, Specific Learning Disability, State, State Educational Agency, Supplementary Aids and Services, and Transition Services.

"Section 603 authorizes the Office of Special Education Programs headed by a Director who is selected by the Secretary and also authorizes the Secretary to accept the work of volunteers in carrying out the Act.

"Section 604 denies a State immunity under the Eleventh Amendment to the Constitution of the United States for violating this Act. This section also provides for remedies for violation and for an effective date for the provision with respect to violations.

"Section 605 authorizes the acquisition of equipment and construction of necessary facilities, and provides that any construction must meet specified accessibility standards.

"Section 606 directs each recipient of funds under this Act to make positive efforts to employ individuals with disabilities in programs assisted under this Act.

"Section 607: includes requirements for prescribing regulations, and for issuing policy letters by the Department of Education.

"PART B

"Section 611 authorizes such sums for Part B and establishes a new formula when the appropriation reaches $4.9 billion.

"Section 612(a) describes the policies and procedures that a State must have in effect to be eligible for receipt of funds under part B of the Act, including policies and procedures relating to: Free Appropriate Public Education; Child Find; Individualized Education Program, Least Restrictive Environment; Procedural Safeguards;

Evaluation; Confidentiality; Transition from Part C to Preschool Programs; Children in Private Schools; State Education Agency Responsible for General Supervision (including an exception relating to disabled children who are convicted as adults under State Law and incarcerated in adult prisons); Obligations Relating to and Methods for Ensuring Services; State Educational Agency Eligibility; Comprehensive System of Personnel Development; Personnel Standards; Performance Goals and Indicators; Participation in Assessments; Supplementation of State, Local and other Federal Funds; Maintenance of State Financial Support; Public Participation; State Advisory Panel; and Suspension and Expulsion Rates.

"Section 612(b) lists the additional requirements under section 613(a) that a State Education Agency must meet if it provides a free appropriate public education or direct services to children with disabilities.

"Section 612(c) includes conditions under which States are required to submit amended policies and procedures to the Secretary, and the Secretary's responsibilities under this section.

"Section 612(d) describes what actions the Secretary must take in approving a State's eligibility, and before making a final determination that a State is not eligible.

"Section 612(e) provides that nothing in the IDEA permits a State to reduce medical and other assistance available, or to alter eligibility, under Titles V and XIX of the Social Security Act (Maternal and Child Health Services and Medicaid) with respect to the provision of a free appropriate public education for children with disabilities within the State.

"Section 612(f) directs the Secretary to arrange for the provision of special education to children with disabilities in private schools if, in 1983, a State was prohibited by State law from providing that education.

"Section 613(a) sets out the local eligibility requirements under part B. The section provides that to be eligible for any fiscal year, an LEA is must demonstrate to the satisfaction of the SEA that its policies, procedures, and programs are consistent with the State policies and procedures described under section 612; and that the LEA uses its part B funds in accordance with the specified requirements of this section; meets the personnel development requirements; and provides the SEA with information to enable that agency to carry out its duties under this part. The section permits LEAs to use the part B funds for various specified purposes. The section also addresses the treatment of charter schools under part B and the disabled children that they serve.

"Section 613(b) includes conditions under which LEAs are required to submit amended policies and procedures to the SEA, and the SEA's responsibilities under this section.

"Section 613(c) provides that if the SEA determines that an LEA or a State agency is not eligible under this section, it must notify that agency of its determination and provide the agency with reasonable notice and an opportunity for a hearing.

"Section 613(d) provides that if an eligible LEA or State agency is failing to comply with any requirement under section 613(a), the SEA shall not make any further payments to that agency until it comes into compliance.

"Section 613(e) sets out conditions under which an SEA may require an LEA to require an LEA to establish its eligibility jointly with another LEA, and describes the conditions under which an educational service agency and a charter school would be exempted from this section.

"Section 613(f) permits an LEA to use up to five percent of its annual part B allotment to develop and implement a coordinated services system.

"Section 613(g) authorizes each LEA to use its part B funds to permit a public school within the jurisdiction of an LEA to design, implement, and evaluate a school based improvement plan.

"Section 613(h) requires the SEA to use the payments that otherwise would have been available to an LEA or State agency to provide special education and related services directly to children with disabilities for whom the agency is responsible, if the SEA determines the existence of one or more specified situations.

"Section 613(i) requires any State agency that desires to receive a subgrant for any fiscal year under part B to demonstrate to the satisfaction of the SEA that the agency meets the conditions described in the section.

"Section 613(j) allows the State to require local educational agencies to include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child to the same extent that such disciplinary information is included in the student records of non-disabled children.

"Section 614(a) sets out requirements relating to initial evaluations, parental consent and refusal of consent, and reevaluations.

"Section 614(b) includes requirements for procedures relating to providing notice to parents about evaluations, and conducting evaluations.

"Section 614(c) includes requirements relating to determining a child's eligibility under part B; reviewing existing evaluation data; obtaining parental consent for reevaluations, and actions to take if additional data are not needed.

"Section 614(d) includes definitions of 'IEP' and 'IEP Team'; requires that an IEP be in effect at the beginning of each school year for each child with a disability, and provides that, for a child aged three, four, or five, an IFSP developed under part C could serve as the child's IEP; requires that each IEP be developed in a meeting by the IEP team, and lists specified areas that must be considered in developing a child's IEP; and requires LEAs to ensure that the IEP team reviews each IEP periodically, but not less than annually, and revises the IEP, as appropriate. The section also requires LEAs to reconvene the IEP team to identify alternative strategies to meet the transition objectives for a student if a participating agency, other than the LEA, fails to provide the transition services described in the IEP. Further, the section includes provisions relating to children with disabilities in adult prisons.

"Section 614(e) provides that nothing in the section shall be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component.

"Section 614(f) requires that each SEA or LEA ensure that the parents of each disabled child are members of any group that makes decisions on the educational placement of their child.

"Section 615(a) provides that any SEA, State agency, or LEA that receives part B funds must establish and maintain procedures to assure that children with disabilities and their families are guaranteed procedural safeguards with respect to the provision of a free appropriate public education.

"Section 615(b) requires that procedural safeguards include: parental opportunity to examine all relevant records on their child; procedures to protect the rights of the child whenever the parents are not known, can't be located after reasonable efforts, or the child is a State ward, including appointing a surrogate parent for the child; written prior notice to the parents, provided in their native language, unless it is clearly not feasible to do so; an opportunity for mediation and to present complaints; notice by the parents or their attorney in the complaint, including information about the child, the problem, and a possible solution known and available at the time; and development of a model by the SEA to assist parents in providing notice.

"Section 615(c) describes the content of the prior written notice provided by the agency.

"Section 615(d) describes the content and timing of the procedural safeguards notice given to the parents.

"Section 615(e) requires SEAs or LEAs to make mediation available to parents, but provides that it is voluntary for both parties to determine whether they want to participate, and is not used to deny or delay a parent's right to a due process hearing under section 615, or to deny any other rights afforded under part B. The section authorizes LEAs to require parents, before requesting a due process hearing, to attend a meeting at which representatives from Parent Training Centers or other alternative dispute resolution groups would explain the benefits of mediation and encourage its use.

"Section 615(f) requires that whenever a complaint has been received, the parents involved in the complaint must have an opportunity for an impartial due process conducted by the SEA or LEA, and also outlines the requirements for the hearing process.

"Section 615(g) provides that any party aggrieved by a due process hearing conducted by the LEA may appeal the decision to the SEA.

"Section 615(h) lists the procedural safeguards rights that are available to any party to a due process hearing or an appeal, including the right to a written, or, at the option of the parents, electronic verbatim record of the hearing and electronic findings of fact and decisions.

"Section 615(i) provides that any party aggrieved by the findings and decision in this section, or in section 615(g), has the right to bring a civil action in a State court or in a District Court of the United States without regard to the amount in question. This section permits the award of attorneys' fees and lists the considerations for reducing attorney's fees.

"Section 615(j) provides that, except as provided in 615(k), the child must remain in the current educational setting while any proceedings conducted under this section are pending.

"Section 615(k) provides two exceptions to the pendency provision under section 615(j): first, with respect to a situation in which a disabled child carries a weapon to school or a school function or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or at a school function; and second, with respect to a situation in which a child's actions are substantially likely to result in injury to the child or others, as determined by a hearing officer. The section sets out conditions and procedures relating to placing a child in an alternative educational setting, conducting a manifestation determination, required actions by the LEA when the child's behavior was not a manifestation of the child's disability, and the required hearing procedures and pendency provisions. The section also sets out protections for children not yet eligible for special education; includes a provision relating to referral to and action by law enforcement and judicial authorities; and includes definitions of 'controlled substance', 'illegal drug', and 'weapon'.

"Section 615(l) maintains the rights available under the Constitution, the Americans with Disabilities Act, title V of the Rehabilitation Act and other federal laws.

"Section 615(m) requires the State to provide for transfer of rights from the parent to the child with a disability when that child reaches the age of majority under State law, unless the child has been found to be unable to provide informed consent to educational decisions.

"Section 616 allows the Secretary to withhold payments to the State, after reasonable notice and an opportunity for a hearing, for substantial failure to comply with any provision or condition under this part. The section also describes the nature of the withholding and the availability and process of a judicial review.

"Section 617 describes the responsibilities of the Secretary under part B, including: arranging for the provision of technical assistance to the States; the issuance of rules and regulations to the extent necessary to ensure compliance with part B; confidentiality; and the hiring of personnel to conduct data collection and evaluation activities.

"Section 618 describes the program information that each State receiving Part B funds and the Secretary of the Interior must provide to the Secretary each year, and permits States and the Secretary of the Interior to obtain the data through sampling. The section also requires each State to collect and examine data each year to determine if significant disproportionality based on race is occurring in the identification and placement of children with disabilities, and provides that if a situation is identified, the State must review and revise, if necessary, its policies, practices, and procedures.

"Section 619(a) directs the Secretary to make grants to assist States to provide special education and related services, in accordance with Part B, to children with disabilities aged three through five and, at the State's discretion, to 2-year-old children with disabilities who will turn three during the school year.

"Section 619(b) provides that a State is eligible for a grant under section 619 if it has established its eligibility under section 612 and it makes a free appropriate public education available to all children with disabilities, aged three through five, residing in its jurisdiction.

"Section 619(c) includes the allotment formula for the Preschool Grants program.

"Section 619(d) describes the general amount of Preschool Grant funds that may be retained by the State.

"Section 619(e) specifies the use of Preschool Grant funds for State administration.

"Section 619(f) specifies the use of Preschool Grant funds for other State-level activities.

"Section 619(g) provides for subgrants to LEAs.

"Section 619(h) provides that part C of this Act does not apply to any child with a disability receiving a free appropriate public education in accordance with part B, with Preschool Grant funds.

"Section 619(i) includes a special definition of 'State' for purposes of allocating funds under the Preschool Grants program.

"Section 619(j) authorizes an appropriation of $500 million for FY 1998 and such sums as may be necessary for each subsequent fiscal year.

"PART C

"Section 631(a) lists the Congressional findings relating to Part C.

"Section 631(b) outlines the policy of the United States to provide financial assistance to enhance the State's capacity to provide quality early intervention services and expand and improve existing early intervention services.

"Section 632 defines the key terms used in this part, including 'at-risk infant or toddler', 'council', 'developmental delay', 'early intervention services', and 'infant or toddler with a disability'.

"Section 633 authorizes the Secretary to make grants to the States to assist them in implementing and maintaining a statewide system of early intervention services for infants and toddlers with disabilities and their families.

"Section 634 establishes the criteria each State must meet to be eligible for a grant under this Part including: adoption of a policy that appropriate early intervention services are available to all infants and toddlers with disabilities and their families in the State (including Indian infants and toddlers with disabilities and their families living on an Indian reservation within the State); and provision of a statewide system of early intervention services which meets the requirements of section 635.

"Section 635(a) establishes the minimum components for a statewide system of early intervention services including: a definition of developmental delay; a timely, comprehensive, multidisciplinary evaluation of each infant or toddler; an Individualized Family Service Plan in accordance with section 636; a comprehensive child find system consistent with Part B; a public awareness program; a central directory; a comprehensive system of personnel development; policies and procedures relating to personnel standards; a single line of responsibility for the administration and supervision of the statewide program; a policy pertaining to contracting with service providers; a procedure for reimbursement of funds; procedural safeguards; a system for compiling data; a State interagency coordinating council that meets the requirements of section 641; and a policy for ensuring that early intervention services are provided in natural environments to the maximum extent appropriate.

"Section 635(b) allows the State to make ongoing, good faith efforts to recruit and hire appropriately and adequately trained personnel and, where there is a shortage of such personnel, to use the most qualified individuals available who are making satisfactory progress toward completing course work necessary to meet State certification standards.

"Section 636(a) requires the statewide system to provide for each infant or toddler with a disability, and each family, to receive: a multidisciplinary assessment; a family-directed assessment; and a written individualized family service plan (IFSP) developed by a multidisciplinary team, including the parents.

"Section 636(b) requires the IFSP be evaluated once a year and requires that every six months the family receive a review of the plan.

"Section 636(c) requires the IFSP be developed within a reasonable time after the assessment, and provides that, with parental consent, early intervention services may commence prior to the completion of the assessment.

"Section 636(d) directs that the individualized family service plan be in writing and details what it must contain.

"Section 636(e) requires parents to provide informed written consent before implementation of the IFSP, and permits the delivery of only those services for which consent has been given.

"Section 637(a) requires that each State desiring to receive a grant under this part submit an application to the Secretary at the time and in the manner required by the Secretary, and describes the information required to be in the application.

"Section 637(b) lists the assurances that the State must include in its application to the Secretary.

"Section 637(c) provides that the Secretary may not disapprove a State's application without first determining, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

"Section 637(d) provides that if a State already has on file with the Secretary policies and procedures that demonstrate that it meets any requirement of part C, the Secretary shall treat the State as meeting that requirement for purposes of receiving a grant under part C.

"Section 637(e) provides that an application submitted by a State in accordance with section 637 shall remain in effect until the State submits to the Secretary such modifications it determines necessary.

"Section 637(f) allows the Secretary to require the State to modify the State's application but only to the extent necessary to ensure the State's compliance with Part C, Infants and Toddlers with Disabilities program.

"Section 638 lists the allowable use of funds under part C, including providing greater flexibility in addressing the needs of at risk infants and toddlers in those States not currently serving such children.

"Section 639(a) details the minimum procedural safeguards a State shall have in place.

"Section 639(b) provides that during the pendency of any proceeding or action involving a complaint by the parents, the infant or toddler shall continue to receive the early intervention services currently being delivered, or if applying for initial services, shall receive the services not in dispute.

"Section 640(a) provides that funds under part C may not be used to pay for services which would have been paid for by another source, including any medical program administered by the Department of Defense, but for the enactment of part C, except to prevent a delay in the provision of early intervention services pending reimbursement from the agency which has ultimate responsibility for the payment.

"Section 640(b) prohibits the State from reducing medical or other assistance available or from altering eligibility under title V of the Social Security Act (relating to maternal and child health) or to title XIX of the Social Security Act (relating to Medicaid for infants or toddlers with disabilities) within the State.

"Section 641(a) requires each State wishing to receive funds under this part to establish an interagency coordinating council with the membership outlined in this section appointed by the Governor.

"Section 641(b) prescribes the composition of the council, including: 20% parent members; 20% service provider members; and at least one member representing the State legislature, personnel preparation, each of the State agencies providing or paying for early intervention services; and other members selected by the Governor.

"Section 641(c) requires the council to meet at least quarterly, and to conduct meetings that have been publicly announced and are open and accessible to the general public.

"Section 641(d) allows the council, subject to the approval of the Governor, to use funds under this part to conduct hearings and forums, reimburse council members for necessary expenses related to attending meetings, hire staff, and for other purposes.

"Section 641(e) describes the functions of the council.

"Section 641(f) prohibits any member of the council from voting on any matter which would give the appearance of a conflict of interest.

"Section 642 provides that sections 616, 617, 618, and 620 shall, to the extent not inconsistent with part C, apply to the program authorized under this part.

"Section 643(a) allows the Secretary to reserve up to one percent of the funds from the appropriation for payment to the outlying areas, and exempts those funds from the provisions of P.L. 95–134.

"Section 643(b) directs the Secretary to make payments of 1.25 percent of the amount available to the States to the Secretary of the Interior for distribution to Indian tribes and includes the methods of allocation, allowable uses of funds, and reporting requirements.

"Section 643(c) describes the manner in which the part C funds will be distributed to the States.

"Section 643(d) allows the Secretary to re-allot any funds refused by a State to the remaining States.

"Section 644(a) requires the Secretary to establish a Federal Interagency Coordinating Council to minimize duplication of programs and activities across Federal, State, and local agencies, ensure the effective coordination of Federal early intervention and preschool programs across Federal agencies, and for other coordinating purposes.

"Section 644(b) prescribes the composition of the Council.

"Section 644(c) requires the council to meet at least quarterly, and to conduct meetings that have been publicly announced and are open and accessible to the general public.

"Section 644(d) describes the functions of the Council.

"Section 644(e) prohibits any member of the Council from voting on any matter which would give the appearance of a conflict of interest under Federal law.

"Section 644(f) exempts the Federal Advisory Committee Act (5 U.S.C. App.) from applying to the establishment or operation of the Council.

"Section 645 authorizes an appropriation of $400,000,000 for fiscal year 1998, and such sums as may be necessary for each of the fiscal years 1999 through 2002.

"PART D—SUBPART 1

"Section 651(a) sets out congressional findings in support of a new program of grants to States to support the development and implementation of plans to improve their systems for educating children with disabilities. The program would be authorized by Subpart 1 of a new Part C of the IDEA.

"Section 651(b) would provide that the purpose of the new program is to assist SEAs and their partners in the State in reforming and improving their systems for providing educational, early intervention, and transitional services to improve results for children with disabilities.

"Section 652(a) permits an SEA to apply for a grant under subpart 1 or a period of not less than one year and not more than five years.

"Section 652(b) requires an SEA that wants to apply for a grant to establish a partnership with LEAs and other State agencies involved in, or concerned with, the education of children with disabilities, and to work in partnership with other organizations and individuals involved in and concerned with the education of children with disabilities. The SEA must involve identified individuals and organizations in the partnership, and may include others at its discretion.

"Section 653 describes the material (including a comprehensive needs assessment and a description of the strategies the State will use to meet those needs) that must be included in a State's application under Subpart 1, the process by which the Secretary makes competitive awards to States, and the obligation of States receiving grants to submit regular performance reports to the Secretary.

"Section 654 describes the permissible uses of a State Improvement grant, and requires each State to use a substantial part of its grant to ensure that there are sufficient personnel who have the skills and knowledge necessary to meet the needs of children with disabilities in the State.

"Section 655 establishes minimum grant amounts for States whose applications are approved, allows the Secretary to increase the minimum amounts in later years to account for inflation, and lists the factors the Secretary considers in setting the amount of individual grants.

"Section 656 authorizes the appropriation of such sums as may be necessary to carry out Subpart 1 for each of the fiscal years 1998 through 2002.

"PART D—SUBPART 2

"Section 661(a), which is similar to current section 610(a), requires the Secretary to develop and implement a comprehensive plan for activities under Subpart 2 of Part D, in order to assist States and LEAs in providing educational, related, and early intervention services to children with disabilities under Parts B and C of the IDEA. In developing that plan, the Secretary is required to consult with individuals with disabilities; parents of children with disabilities; appropriate professionals; and representatives of SEAs, LEAs, private schools, institutions of higher education, other Federal agencies, the National Council on Disabilities, and national organizations with an interest in, and expertise in, providing services to children with disabilities and their families.

"Section 661(b)(1) replaces the individual statements of eligibility that are now scattered throughout the discretionary program authorities with a single comprehensive statement that, except as otherwise provided, those eligible to apply for awards under Subpart 2 are: (1) SEAs; (2) LEAs; (3) institutions of higher education; (4) other public agencies; (5) private nonprofit organizations; (6) Indian tribes and tribal organizations; and (7) when the Secretary finds it appropriate in light of the purposes of the particular competition, for-profit organizations.

"Section 661(b)(2) permits the Secretary to limit individual competitions to one or more categories of eligible entities listed above.

"Section 661(c) affords the Secretary some flexibility in using funds under Subpart 2 by allowing the Secretary to use up to 20 percent of the funds available under Chapter 1 or Chapter 2 for activities authorized by the other chapter, or for any combination of activities consistent with the purposes of either or both chapters.

"Section 661(d), relating to special populations, is based on current section 610(b) and (j). Paragraph (1) directs the Secretary, as appropriate, in making awards under Subpart 2, to require applicants to demonstrate how they will address the needs of children with disabilities from minority backgrounds.

"Section 661(d)(2)(A) further directs the Secretary, notwithstanding any other provision of the IDEA, to ensure that at least one percent of the total amount of funds appropriated for Subpart 2 is used to provide outreach and technical assistance to Historically Black Colleges and Universities (HBCUs), and to institutions of higher education with minority enrollments of at least 25 percent, to promote their participation in activities under the Subpart 2 programs; and to enable those HBCUs and institutions to assist others in improving educational results for children with disabilities. Paragraph (3)(B) would allow the Secretary to reserve funds appropriated under Parts D through G (and, for fiscal year 1996, under Parts C through G) to meet that requirement. These provisions are analogous to current section 610(j)(2)(C)(iii).

"Section 661(e) enables the Secretary to give priority to particular types of projects without requiring public comment.

"Section 661(f)(1) directs the Secretary to require that applicants for, and recipients of, awards under Subpart 2 involve individuals with disabilities and parents of individuals with disabilities in planning, implementing, and evaluating projects, and, where appropriate, determine their projects' potential for replication and widespread adoption. Paragraph (2) permits the Secretary to require that those applicants and recipients share in the cost of projects; prepare their findings and products in formats useful for specific audiences; disseminate their findings and products; and collaborate with other recipients. These two paragraphs replace current section 610(g).

"Section 661(g), which is similar to current section 610(h), provides for peer review of applications under Subpart 2 for more than $75,000. (The current threshold is $60,000.) Separate peer-review provisions for State Improvement Plans under the new Subpart 1 apply to that program.

"Section 661(h) allows the Secretary to use funds appropriated to carry out Subpart 2 to evaluate activities carried out under that subpart.

"Section 661(i) ensures that the needs of children with low-incidence disabilities continue to be met during the implementation of the new, more flexible authorities by guaranteeing that, however the Secretary implements those authorities, certain absolute dollar amounts continue to be spent in the following specified areas: (1) $12,832,000 to address the educational, related services, transitional, and early intervention needs of children with deaf-blindness; (2) $4,000,000 to address the postsecondary, vocational, technical, continuing, and adult education needs of individuals with deafness; and (3) $4,000,000 to address the special educational, related services, and transitional needs of children with emotional disturbance and those who are at risk of developing an emotional disturbance. Paragraph (2) provides for a proportionate reduction of these amounts if the total amount appropriated for any fiscal year for Subpart 2 falls below $130 million.

"Section 661(j) restricts a State educational agency and local educational agency from being eligible for research, personnel training, technical assistance, support and dissemination grants unless the State is eligible for a preschool grant.

"Chapter 1

"Section 671(a) sets out congressional findings in support of the Chapter 1 program. Section 671(b) provides that the purpose of Chapter 1 is to provide Federal funding for certain coordinated research, demonstration projects, outreach, and personnel-preparation activities that are linked with, and promote, systemic change;

and that improve early intervention, educational, and transitional results for children with disabilities.

"Section 672(a) directs the Secretary to make competitive awards to eligible entities to produce and advance the use of knowledge for six specified purposes.

"Section 672(b) directs the Secretary to support activities, consistent with the objectives described in section 672(a), that lead to the production of new knowledge, and lists a variety of specific activities that may be carried out.

"Section 672(c) directs the Secretary to support activities, consistent with the objectives described in section 672(a), that integrate research and practice, including activities that support State systemic-change and local capacity-building and improvement efforts, and lists examples of activities that may be carried out under this subsection.

"Section 672(d) directs the Secretary to support activities, consistent with the objectives described in section 672(a), that improve the use of professional knowledge, including activities that support State systemic-change and local capacity-building and improvement efforts, and lists examples of activities that may be carried out under this subsection.

"Section 672(e) requires the Secretary, in carrying out section 632, to ensure that there is an appropriate balance among knowledge production, integration of research and practice, and use of professional knowledge; and across all age ranges of children with disabilities.

"Section 672(f) requires an eligible entity that wishes to receive an award under section 672 to submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"Section 672(g) authorizes the appropriation of such sums as may be necessary to carry out section 672 for each of the fiscal years 1998 through 2002.

"Section 673(a) directs the Secretary to make competitive awards to eligible entities to help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education to work with children with disabilities; and to ensure that those personnel have the skills and knowledge reflecting successful practices determined through research and practice that are needed to serve those children.

"Section 673(b) directs the Secretary, in carrying out section 673, to support activities, consistent with the objectives described in section 673(a), that benefit children with low-incidence disabilities; identifies examples of activities that may be carried out under this subsection; defines the term "low-incidence disability"; and permits the Secretary to give preference to applications that propose to prepare personnel in more than one low-incidence disability, such as deafness or blindness.

"Section 673(c) directs the Secretary to support leadership-preparation activities that are consistent with the objectives described in section 673(a), and lists examples of specific activities that may be carried out under this subsection.

"Section 673(d) directs the Secretary to support activities, consistent with the objectives described in section 673(a), that are of national significance and have broad applicability, and lists examples of specific activities that may be carried out under this subsection.

"Section 673(e) directs the Secretary to support activities, consistent with the objectives described in section 673(a), to benefit children with high-incidence disabilities, and lists examples of specific activities that may be carried out under this subsection.

"Section 673(f) requires an eligible entity that wishes to receive an award under section 673 to submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, and describes certain material that must be included, or that the Secretary may require to be included, in applications for funds to carry out certain activities.

"Section 673(g) establishes various rules for the selection of recipients under section 673.

"Section 673(h) requires applicants for certain projects under section 673 to provide an assurance that they will ensure that individuals who receive scholarship assistance under the proposed project will subsequently work in the area for which they received training or repay all or part of that assistance, in accordance with regulations issued by the Secretary.

"Section 673(i) permits the Secretary to include funds for scholarships, with necessary stipends and allowances, in awards under section 633.

"Section 673(j) authorizes the appropriation of such sums as may be necessary to carry out section 673 for each of the fiscal years 1998 through 2002.

"Section 674(a) directs the Secretary to assess progress in the implementation of the IDEA, including the effectiveness of State and local efforts to provide a free appropriate public education to children with disabilities, and to provide early intervention services to infants and toddlers with disabilities and infants and toddlers at risk for developmental delay. To that end, the Secretary may support studies, evaluations, and assessments, including various studies described in this subsection.

"Section 674(b) directs the Secretary to carry out a national assessment of activities carried out with Federal funds under the IDEA in order to: (1) determine the effectiveness of the IDEA in achieving its purposes; (2) provide information to the President, the Congress, the States, LEAs, and the public on how to implement the IDEA more effectively; and (3) provide the President and the Congress with information that will be useful in developing legislation to achieve the purposes of the IDEA more effectively. An interim report is due to Congress by October 1, 1999; and a final report of the findings of the assessment is due by October 1, 2001.

"Section 674(c) requires the Secretary to provide an annual report to Congress that includes an analysis and summary of the data reported by the States and the Secretary of the Interior under section 618; the results of activities conducted under section 674(a); and the findings and determinations resulting from reviews of State implementation of the IDEA.

"Section 674(d) directs the Secretary to provide technical assistance to LEAs to assist them in carrying out local capacity-building and improvement projects under section 611(e) of Part B.

"Section 674(e) allows the Secretary to reserve up to one-half of one percent of the amount appropriated under Parts B and C for each fiscal year to carry out section 674.

"Chapter 2

"Section 681(a) sets out congressional findings in support of Chapter 2.

"Section 681(b) provides that the purposes of Chapter 2 are to ensure that: (1) children with disabilities, and their parents, receive training and information on their rights and protections under the IDEA; (2) parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist them to improve services and results for children with disabilities and their families; (3) appropriate technology and media are researched, developed, demonstrated, and made available in timely and accessible formats to parents, teachers, and all types of personnel providing services to children with disabilities; (4) on reaching the age of majority under State law, children with disabilities understand their rights and responsibilities under Part B of the IDEA, if the State provides for the transfer of parental rights under Part B; and (5) the general welfare of deaf and hard-of-hearing individuals is promoted.

"Section 682(a) authorizes the Secretary to make awards to parent organizations to support parent training and information (PTI) centers.

"Section 682(b) requires each PTI center assisted under section 682 to carry out a variety of specified activities.

"Section 682(c) identifies additional activities that PTI centers may, but are not required, to carry out.

"Section 682(d) requires each application for a PTI center to identify the special efforts that the applicant will undertake to: (1) ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and (2) work with community-based organizations.

"Section 682(e)(1) requires the Secretary to make at least one award to a parent organization in each State, unless the Secretary does not receive an application from a parent organization in the State of sufficient quality to warrant approval.

"Section 682(e)(2) requires the Secretary to select among applications submitted by parent organizations so as to ensure the most effective assistance to parents, including parents in urban and rural areas in the State.

"Section 682(f) requires the board of directors or special governing committee of each organization that receives an award for a parent training and information center to meet at least once in each calendar quarter to review the activities for which the award was made.

"Section 682(g) identifies the characteristics of those private nonprofit organizations that qualify as "parent organizations" and that are, therefore, eligible to apply for PTI center awards under section 682. In addition to other requirements, such an organization must either have a board of directors the majority of whom are parents of children with disabilities or have established a special governing committee for the PTI center that meets that condition.

"Section 683(a) authorizes the Secretary to make awards to local parent organizations to support local parent training and information centers that will help ensure that underserved parents of children with disabilities have the training and information they need to enable them to participate effectively in helping their children with disabilities: (1) meet developmental goals and, to the maximum extent possible, those challenging standards that have been established for all children; and (2) be prepared to lead productive, independent adult lives to the maximum extent possible.

"Section 683(b) identifies certain activities that each local PTI center assisted under section 683 must carry out.

"Section 683(c) defines the term "local parent organization", as used in section 683.

"Section 684(a) would authorize the Secretary to provide technical assistance for developing, assisting, and coordinating parent training and information carried out by PTI centers assisted under sections 682 and 683.

"Section 684(b) would allow the Secretary to focus technical assistance under section 684 on various areas.

"Section 685(a) directs the Secretary to provide technical assistance and information to interested parties in order to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and to address systemic-change goals and priorities.

"Section 685(b) directs the Secretary to carry out or support technical assistance activities, consistent with the objectives described in section 685(a), relating to systemic change, and identifies examples of specific activities that are authorized under this subsection.

"Section 685(c) directs the Secretary to carry out or support activities, consistent with the objectives described in section 685(a), relating to specific topics or populations, and identifies examples of specific activities that are authorized under this subsection.

"Section 685(d) directs the Secretary to carry out or support information dissemination activities that are consistent with the objectives described in section 685(a), including activities that address national needs for the preparation and dissemination of information relating to eliminating barriers to systemic-change and improving early intervention, educational, and transitional results for children with disabilities.

"Section 685(e) requires an eligible entity that wishes to receive an award under section 685 to submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"Section 686 authorizes the appropriation of such sums as may be necessary to carry out sections 681 through 685 for each of the fiscal years 1998 through 2002.

"Section 687(a) directs the Secretary to make competitive awards to eligible entities to support technology development, demonstration, and utilization activities described in section 687(b) and educational media services activities described in section 687(c). Subsection (d) requires any eligible entity that wishes to receive an award under section 687 to submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. Subsection (e) authorizes the appropriation of such sums as may be necessary to carry out section 687 for each of the fiscal years 1998 through 2002.

MISCELLANEOUS PROVISIONS

Section 201 of the bill specifies effective dates.

Section 202 of the bill provides that notwithstanding any other provision of law, beginning on October 1, 1997, the Secretary of Education may use funds appropriated under part D of the Individuals with Disabilities Education Act to make continuation awards that were funded under Section 618 and parts C through G of such Act (as in effect on September 30, 1997).

Section 203 of the bill repeals part I of the Individuals with Disabilities Education Act, effective October 1, 1998; repeals part H of such Act, effective July 1, 1998; and repeals parts C, E, F, and G, effective October 1, 1997.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives and clause 2(b)(l) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

The provisions of the Individuals with Disabilities Education Act and the amendments made thereto by H.R. 5 are within the powers of Congress under the spending clause of the constitution, Article I section 8, clause 1.

GOVERNMENT REFORM AND OVERSIGHT

With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 5.

COMMITTEE ESTIMATE

Clause 7 of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 5. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

APPLICATION OF LAW TO LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. The bill provides grant funds to States and localities to educate children with disabilities and increases educational opportunities available to these children. This bill does not prohibit legislative branch employees from receiving the benefits of this legislation.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act requires a statement of whether the provisions of the reported bill include unfunded mandates; the bill provides funds for programs authorized under this bill at the local level and as such does not contain any unfunded mandates. The Committee also received a letter regarding unfunded mandates from the Director of the Congressional Budget Office. See infra.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 2(l)(3)(B) of rule XI of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 2(l)(3)(C) of rule XI of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 5 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 9, 1997.

Hon. WILLIAM F. GOODLING,
Chairman, Committee on Education and the Workforce,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5, the Individuals with Disabilities Act Amendments of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Justin Latus.

Sincerely,

JUNE E. O'NEILL, *Director.*

H.R. 5—Individuals with Disabilities Education Act Amendments of 1997

Summary: H.R. 5 would revise the Individuals with Disabilities Education Act (IDEA) and would reauthorize funding for many of the programs that fall under the act. The purposes of H.R. 5 are to ensure that children with disabilities receive a free appropriate public education that is designed to meet their needs and prepare them for employment, to assist states and localities in providing education for children with disabilities, and to assess the effectiveness of efforts to educate children with disabilities.

The bill would give states the option to expand the definition of developmentally disabled children to include children aged 6 to 9, and in doing so would increase authorizations of appropriations for the permanently authorized general grants to states program by about $200 million a year. H.R. 5 would reduce authorizations of appropriations for the permanently authorized preschool grant program by $400 million in 1998.

H.R. 5 would also reauthorize several programs that have expired, including the infants and toddlers program and the special purpose funds. The bill would reauthorize the special purpose funds and also consolidate fourteen separate programs that received an appropriation in 1997 into five new programs. These reauthorizations total $700 million to $800 million a year.

This cost estimate describes what H.R. 5 would authorize for spending on programs under the Individuals With Disabilities Education Act. Since all IDEA spending is discretionary, however, the amount that will actually be spent on this program will be determined in the annual appropriations process. For example, although total authorizations of appropriations under H.R. 5 in fiscal year 1998 are $16 billion, the program was funded at $4 billion in fiscal year 1997.

The provisions of H.R. 5 are excluded from consideration under the Unfunded Mandates Reform Act because they would "establish or enforce statutory rights that prohibit discrimination on the basis of * * * handicap, or disability."

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5 is shown in the following tables.

TABLE 1: ESTIMATED BUDGETARY IMPACT OF H.R. 5

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
WITH ADJUSTMENTS FOR INFLATION						
Authorizations of appropriations under current law:						
Estimated authorization	4,036	15,927	16,664	17,424	18,224	19,064
Estimated outlays	3,320	4,988	12,394	15,924	17,239	18,030
Propsoed changes:						
Estimated authorization	0	523	952	982	1,013	1,045
Estimated outlays	0	52	409	800	955	1,005
Authorizations of appropriations under H.R. 5:						
Estimated authorization	4,036	16,449	17,616	18,406	19,237	20,109
Estimated outlays	3,320	5,040	12,803	16,724	18,194	19,035
WITHOUT ADJUSTMENTS FOR INFLATION						
Authorizations of appropriations under current law:						
Estimated authorization	4,036	15,927	16,664	17,424	18,224	19,064
Estimated outlays	3,320	4,988	12,394	15,924	17,239	18,030
Proposed Changes:						
Estimated authorization	0	523	933	943	953	964
Estimated outlays	0	52	407	784	920	951
Authorizations of appropriations under H.R. 5:						
Estimated authorization	4,036	16,449	17,596	18,367	19,177	20,029
Estimated outlays	3,320	5,040	12,801	16,709	18,159	18,981

Notes: The 1997 levels are the amounts appropriated. Components may not sum to totals because of rounding.

The costs of this legislation fall within budget function 500 (education, training, employment, and social services).

TABLE 2: ESTIMATED BUDGETARY IMPACT OF H.R. 5—BY PART, WITH ADJUSTMENTS FOR INFLATION

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
Part B—General grants:						
Estimated authorization	0	204	214	224	234	245
Estimated outlays	0	20	144	201	221	232

TABLE 2: ESTIMATED BUDGETARY IMPACT OF H.R. 5—BY PART, WITH ADJUSTMENTS FOR INFLATION—Continued

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
Part B—Preschool grants:						
Estimated authorization	0	−400	0	0	0	0
Estimated outlays	0	−40	−240	−100	−20	0
Part C:						
Estimated authorization	0	400	411	422	433	445
Estimated outlays	0	40	281	389	419	430
Part D—Subpart 1:						
Estimated authorization	0	104	107	110	113	116
Estimated outlays	0	10	73	101	109	112
Part D—Subpart 2, section 672:						
Estimated authorization	0	110	113	116	119	122
Estimated outlays	0	11	77	107	115	118
Part D—Subpart 2, section 673:						
Estimated authorization	0	50	51	53	54	56
Estimated outlays	0	5	35	49	52	54
Part D—Subpart 2, Section 686:						
Estimated authorization	0	25	26	26	27	28
Estimated outlays	0	3	18	24	26	27
Part D—Subpart 2, section 687:						
Estimated authorization	0	30	31	32	32	33
Estimated outlays	0	3	21	29	31	32
Part D—Subtotal:						
Estimated authorization	0	319	328	336	345	355
Estimated outlays	0	32	224	310	334	343
Total:						
Estimated authorization	0	523	952	982	1,013	1,045
Estimated outlays	0	52	409	800	955	1,005

Notes: The 1997 levels are the amounts appropriated. Components may not sum to totals because of rounding.

TABLE 3: ESTIMATED BUDGETARY IMPACT OF H.R. 5—BY PART, WITHOUT ADJUSTMENTS FOR INFLATION

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
Part B—General grants:						
Estimated authorization	0	204	214	224	234	245
Estimated outlays	0	20	144	201	221	232
Part B—Preschool grants:						
Estimated authorization	0	−400	0	0	0	0
Estimated outlays	0	−40	−240	−100	−20	0
Part C:						
Estimated authorization	0	400	400	400	400	400
Estimated outlays	0	40	280	380	400	400
Part D—Subpart 1:						
Estimated authorization	0	104	104	104	104	104
Estimated outlays	0	10	73	99	104	104
Part D—Subpart 2, Section 672:						
Estimated authorization	0	110	110	110	110	110
Estimated outlays	0	11	77	105	110	110
Part D—Subpart 2, Section 673:						
Estimated authorization	0	50	50	50	50	50
Estimated outlays	0	5	35	48	50	50
Part D—Subpart 2, Section 686:						
Estimated authorization	0	25	25	25	25	25
Estimated outlays	0	3	18	24	25	25
Part D—Subpart 2, Section 687:						
Estimated authorization	0	30	30	30	30	30
Estimated outlays	0	3	21	29	30	30
Part D—Subtotal:						
Estimated authorization	0	319	319	319	319	319

TABLE 3: ESTIMATED BUDGETARY IMPACT OF H.R. 5—BY PART, WITHOUT ADJUSTMENTS FOR INFLATION—Continued

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
Estimated outlays	0	32	223	303	319	319
Total:						
Estimated authorization	0	523	933	943	953	964
Estimated outlays	0	52	407	784	920	951

Notes: The 1997 levels are the amounts appropriated. Components may not sum to totals because of rounding.

Basis of estimate: The spending that would occur under H.R. 5 would be subject to the availability of appropriated funds. Estimated outlays are based on the historical spending of programs authorized by IDEA. Parts A, B, and C would be effective on July 1, 1998, and Part D would be effective on October 1, 1997.

PART B

H.R. 5 would revise Part B of IDEA, including the program of general grants to states. Current law permanently authorizes such sums as may be necessary for this program and contains a formula for determining how much states would get if the program is fully funded—the number of children with a disability times 40 percent of the average per pupil expenditure. H.R. 5 would give states the option to expand the definition of children with disabilities to include children aged 6 to 9 who are determined to be developmentally delayed (i.e., experiencing delays in physical, cognitive, communication, social, emotional, or adaptive development). This expansion of eligibility by about 10 percent would increase the authorizations of appropriations by about $200 million in 1998 and $1.1 billion over the 1998–2002 period, including adjustments for increases in the number of disabled children and costs per pupil.

H.R. 5 would also revise the section of Part B of IDEA that deals with preschool grants to states. Current law permanently authorizes such sums as may be necessary to provide funding for grants for preschool children with disabilities, with a maximum grant for each child capped at $1,500. Authorizations of appropriations for 1998 under current law are estimated to be about $900 million. H.R. 5 would authorize appropriations for preschool children with disabilities of $500 million in fiscal year 1998 and such sums as necessary in subsequent years. The bill would remove the limit on the grant amount per child. CBO estimates that H.R. 5 would decrease authorizations of appropriations by $400 million in 1998. This authorization level represents an increase, however, over the fiscal year 1997 appropriation for grants for preschool children of $360 million.

PART C

Part C of H.R. 5 would authorize $400 million in 1998 and such sums as necessary in fiscal years 1999 through 2002 for spending on infants and toddlers with disabilities. Part C would be similar to part H of current law, which covers infants and toddlers with disabilities and which is authorized through fiscal year 1997. Budget authority is estimated to increase by $400 million in fiscal year 1998 and $2.1 billion over the 1998–2002 period, with adjustments for inflation. Without adjustments for inflation, the total would be $2.0 billion.

PART D

Part D of H.R. 5 would authorize such sums as necessary for grants to fund activities to improve the education of children with disabilities for fiscal years 1998 through 2002. The fourteen current law special purpose funds that this part would replace are not authorized beyond 1997.

Subpart 1.—Subpart 1 of Part D would authorize appropriations for state program improvement grants for children with disabilities. This program has no equivalent under current law. The program would give money to states to improve their systems of delivery of services to children with disabilities. States would be required to spend a certain share of the grants they receive on training and development of personnel who work with children with disabilities. This subpart authorizes a maximum grant of $2 million per state for each of the fifty states, the District of Columbia, and Puerto Rico. CBO uses this maximum amount to estimate total authorizations of appropriations for fiscal year 1998 of $104 million. Authorizations of appropriations would total $550 million over the 1998–2002 period with adjustments for inflation and $520 million without adjustments for inflation.

Subpart 2.—Section 672 authorizes such sums as necessary for "research and innovation to improve services and results for children with disabilities" for fiscal years 1998 through 2002. CBO assumes this section would authorize spending on activities covered under such current programs as innovation and development, deafblindness, serious emotional disturbances, severe disabilities, early-childhood education, secondary and transitional services, post-secondary education, and special studies. Using the amounts appropriated for these activities in fiscal year 1997 as a benchmark, CBO estimates that section 672 would authorize $110 million in fiscal year 1998, or $580 million over fiscal years 1998–2002, with adjustments for inflation. Authorizations of appropriations for the same period without adjustments for inflation would total $550 million.

Section 673 authorizes such sums as necessary for activities related to the professional development of personnel who work with children with disabilities. Current authorizations of appropriations for these activities do not extend beyond 1997. Personnel development activities under this subpart would be implemented by the Secretary of Education, as contrasted with the personnel development activities in Subpart 1 which would be initiated by states. Spending on the current personnel development program (conducted by the Secretary of Education) was about $100 million in 1997. CBO assumes that under H.R. 5, some personnel development spending would be shifted to Subpart 1 and that authorizations of appropriations under Subpart 2 would be only $50 million fiscal year 1998, or about $260 million for fiscal years 1998–2002 when inflation is considered. The total for 1998–2002 without adjustments for inflation would be $250 million.

Section 686 would authorize appropriations for parent training and information centers and community parent resource centers.

Current programs that would be authorized under this section include parent training, clearinghouses, and regional resource centers. Using the 1997 appropriations for these programs as a guide, CBO estimates that this section would increase authorizations of appropriations by $25 million in fiscal year 1998 and $132 million over the 1998–2002 period, with adjustments for inflation. The total over the same period without adjustments for inflation would be $125 million.

Section 687 would authorize such sums as necessary for activities related to media services and technology development, demonstration, and utilization. CBO estimates that this section would increase authorizations by $30 million in 1998. The total increase in authorizations over the 1998–2002 period would be $158 million with adjustments for inflation, or $150 million without adjustments for inflation. CBO used what was appropriated for media and captioning services and technology applications under the current IDEA law for fiscal year 1997 as its basis for estimating these amounts.

REPEALS

H.R. 5 repeals parts C, E, F, G, H, and I of current law. Authorizations of appropriations for Parts C, E, F, G, and H have expired, so repealing these parts would have no budgetary impact. Part I is authorized as such sums as may be necessary through fiscal year 1998 under the General Education Provisions Act (GEPA). (GEPA provides an automatic one-year extension of authorizations for all programs in the Department of Education.) Since this part (family support) has never received an appropriation, the estimate includes no savings from its repeal.

Pay-as-you-go considerations: None.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

Section 4 of the Unfunded Mandates Reform Act excludes from consideration under that Act any bill that would "establish or enforce statutory rights that prohibit discrimination on the basis of . . . handicap, or disability." H.R. 5 fits within that exclusion because it would ensure that the rights of children with disabilities are protected in the public education system.

Estimate Prepared by: Federal Cost: Justin Latus, Impact on State, Local and Tribal Governments: Marc Nicole. Impact on the Private Sector: Kathryn Rarick.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

CORRESPONDENCE

COMMITTEE ON NATIONAL SECURITY,
HOUSE OF REPRESENTATIVES,
Washington, DC, May 7, 1997.

Hon. WILLIAM F. GOODLING,
Chairman, Committee on Education and the Workforce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I understand the Committee on Education and the Workforce will shortly mark up H.R. 5, the IDEA Improvement Act of 1997. The bill includes a provision clarifying the circumstances under which the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) qualifies as a payor of last resort for infants and toddlers who receive medical treatment from the Department of Defense. This provision falls within the legislative jurisdiction of the Committee on National Security pursuant to House Rule X.

In recognition of your committee's desire to bring this legislation expeditiously before the House of Representatives, the Committee on National Security will forego a request for sequential referral of the bill, without waiving or diminishing this committee's jurisdiction over this provision. Of course, this committee will seek the appointment of conferees with respect to provisions within its legislative jurisdiction during any conference on the bill. I also request that this letter be printed in your committee's report on this legislation.

Thank you for your assistance and prompt attention to this matter.

With warm personal regards, I am

Sincerely,

FLOYD D. SPENCE, *Chairman.*

COMMITTEE ON EDUCATION AND THE WORKFORCE,
HOUSE OF REPRESENTATIVES,
Washington, DC, May 7, 1997.

Hon. FLOYD SPENCE,
Chairman, Committee on National Security,
House of Representatives, Washington, DC.

DEAR CHAIRMAN SPENCE: Thank you for working with me in the development of H.R. 5, the "IDEA Improvement Act of 1997", specifically the provision clarifying the "Payor of Last Resort" found in Section 640 of the matter to be inserted into the Individuals with Disabilities Education Act. This provision clarifies that funds under Part C of the Act, programs for infants and toddlers with disabilities, are truly the payor of last resort even for military families who receive medical services from the Department of Defense (DOD), specifically the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). The Committee does not intend to change what is currently covered by DOD programs nor does the Committee expect that coverage under DOD medical programs will change.

As reported by the Committee, the relevant language in Section 640 states:

> Nonsubstitution.—Funds provided under section 643 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, *including any medical program administered by the Secretary of Defense,* but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 643 may be used to pay the provider of services pend-

> ing reimbursement from the agency that has ultimate responsibility for the payment. (Italic added)

Based on this provision as written, you will not seek referral of H.R. 5 containing this clarification, nor will the Committee on National Security seek jurisdiction over this provision in the future. The Committee on Education and the Workforce holds no jurisdictional interest in CHAMPUS and does not intend to change the CHAMPUS program. Again, I thank you for working with me to clarify current law, for confirming our understanding, and for working with me in developing this amendment to H.R. 5.

Sincerely,

BILL GOODLING, *Chairman*.

ROLLCALL VOTES

ROLL CALL 1 **BILL** H.R. 5 **DATE** May 7, 1997
AMENDMENT NUMBER 3 **DEFEATED** 5 - 29
SPONSOR/AMENDMENT Mr. Owens / Amendment regarding funding of parent training centers

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. GOODLING, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mrs. ROUKEMA				X
Mr. FAWELL		X		
Mr. BALLENGER		X		
Mr. BARRETT				X
Mr. HOEKSTRA		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON				X
Mr. TALENT		X		
Mr. GREENWOOD				X
Mr. KNOLLENBERG				X
Mr. RIGGS		X		
Mr. GRAHAM		X		
Mr. SOUDER		X		
Mr. McINTOSH		X		
Mr. NORWOOD				X
Mr. PAUL				X
Mr. SCHAFFER		X		
Mr. PETERSON		X		
Mr. UPTON		X		
Mr. DEAL		X		
Mr. HILLEARY		X		
Mr. SCARBOROUGH				X
Mr. CLAY				X
Mr. MILLER		X		
Mr. KILDEE		X		
Mr. MARTINEZ		X		
Mr. OWENS	X			
Mr. PAYNE	X			
Mrs. MINK	X			
Mr. ANDREWS				X
Mr. ROEMER		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. ROMERO-BARCELO				X
Mr. FATTAH		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KIND		X		
Ms. SANCHEZ		X		
Mr. FORD	X			
Mr. KUCINICH	X			
TOTALS	5	29		11

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

[PART A—GENERAL PROVISIONS

[SHORT TITLE; STATEMENT OF FINDINGS AND PURPOSE

[SEC. 601. (a) This title may be cited as the "Individuals with Disabilities Education Act".

[(b) The Congress finds that—

[(1) there are more than eight million children with disabilities in the United States today;

[(2) the special educational needs of such children are not being fully met;

[(3) more than half of the children with disabilities in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity;

[(4) one million of the children with disabilities in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;

[(5) there are many children with disabilities throughout the United States participating in regular school programs whose disabilities prevent them from having a successful educational experience because their disabilities are undetected;

[(6) because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense;

[(7) developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, State and local educational agencies can and will provide effective special education and related services to meet the needs of children with disabilities;

[(8) State and local educational agencies have a responsibility to provide education for all children with disabilities, but present financial resources are inadequate to meet the special educational needs of children with disabilities; and

[(9) it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of children with disabilities in order to assure equal protection of the law.

[(c) It is the purpose of this Act to assure that all children with disabilities have available to them, within the time periods specified in section 612(2)(B), a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of children with disabilities and their parents or guardians are protected, to assist States and localities to provide for the education of all children with disabilities, and to assess and assure the effectiveness of efforts to educate children with disabilities.

[DEFINITIONS

[SEC. 602. (a) As used in this title—

[(1)(A) The term "children with disabilities" means children—

[(i) with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

[(ii) who, by reason thereof, need special education and related services.

[(B) The term "children with disabilities" for children aged 3 to 5, inclusive, may, at a State's discretion, include children—

[(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

[(ii) who, by reason thereof, need special education and related services.

[(4) The term "construction", except where otherwise specified, means (A) erection of new or expansion of existing structures, and the acquisition and installation of equipment therefor; or (B) acquisition of existing structures not owned by any agency or institution making application for assistance under this title; or (C) remodeling or alteration (including the acquisition, installation, modernization, or replacement of equipment) of existing structures; or (D) acquisition of land in connection with the activities in clauses (A), (B), and (C); or (E) a combination of any two or more of the foregoing.

[(5) The term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices, and books, periodicals, documents, and other related materials.

[(6) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99–658).

[(7) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

[(8) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function, for public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

[(9) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law.

[(10) The term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

[(11) The term "institution of higher education" means an educational institution in any State which—

[(A) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

[(B) is legally authorized within such State to provide a program of education beyond high school;

[(C) provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

[(D) is a public or other nonprofit institution; and

[(E) is accredited by a nationally recognized accrediting agency or association listed by the Secretary pursuant to this paragraph or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited: *Provided, however,* That in the case of an institution offering a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge, if the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit such institutions, the Secretary shall appoint an advisory committee, composed of persons specially qualified to evaluate training provided by such institutions, which shall prescribe the standards of content, scope, and quality which must be met in order to qualify such institutions to participate under this Act and shall also determine whether particular institutions meet such standards. For the purposes of this paragraph the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authority as to the quality of education or training offered.

The term includes community colleges receiving funding from the Secretary of the Interior under the Tribally Controlled Community College Assistance Act of 1978.

[(12) The term "nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

[(13) The term "research and related purposes" means research, research training (including the payment of stipends and allowances), surveys, or demonstrations in the field of education of children with disabilities, or the dissemination of information derived therefrom, including (but without limitation) experimental schools.

[(14) The term "Secretary" means the Secretary of Education.

[(15) The term "children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

[(16) The term "special education" means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability, including—

[(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

[(B) instruction in physical education.

[(17) The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

[(18) The term "free appropriate public education" means special education and related services that—

[(A) have been provided at public expense, under public supervision and direction, and without charge,

[(B) meet the standards of the State educational agency,

[(C) include an appropriate preschool, elementary, or secondary school education in the State involved, and

[(D) are provided in conformity with the individualized education program required under section 614(a)(5).

[(19) The term "transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

[(20) The term "individualized education program" means a written statement for each child with a disability developed in any meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall include—

[(A) a statement of the present levels of educational performance of such child,

[(B) a statement of annual goals, including short-term instructional objectives,

[(C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs,

[(D) a statement of the needed transition services for students beginning no later than age 16 and annually thereafter (and, when determined appropriate for the individual, beginning at age 14 or younger), including, when appropriate, a statement of the interagency reponsibilities or linkages (or both) before the student leaves the school setting,

[(E) the projected date for initiation and anticipated duration of such services, and

[(F) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved. In the case where a participating agency, other than the educational agency, fails to provide agreed upon services, the educational agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives.

[(21) The term "excess costs" means those costs which are in excess of the average annual per student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting—

[(A) amounts received—

[(i) under this part,

[(ii) under title I of the Elementary and Secondary Education Act of 1965, or

[(iii) under title VII of the Elementary and Secondary Education Act of 1965, and

[(B) any State or local funds expended for programs that would qualify for assistance under such part, chapter, or title.

[(22) The term "native language" has the meaning given that term by section 7003(a)(2) of the Bilingual Education Act.

[(23) The term "intermediate educational unit" means any public authority, other than a local educational agency, which is under the general supervision of a State educational agency, which is established by State law for the purpose of providing free public education on a regional basis, and which provides special education and related services to children with disabilities within that State.

[(24)(A) The term "public or private nonprofit agency or organization" includes an Indian tribe and the Bureau of Indian Affairs of the Department of the Interior (when acting on behalf of schools operated by the Bureau for children and students on Indian reservations) and tribally controlled schools funded by the Department of the Interior.

[(B) The terms "Indian", "American Indian", and "Indian American" mean an individual who is a member of an Indian tribe.

[(C) The term "Indian tribe" means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act).

[(25) The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

[(26) The term "assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

[(A) the evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;

[(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

[(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

[(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

[(E) training or technical assistance for an individual with disabilities, or, where appropriate, the family of an individual with disabilities; and

[(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities.

[(27) The term "underrepresented" means populations such as minorities, the poor, the limited English proficient, and individuals with disabilities.

[(b) For purposes of part C of this title, "youth with a disability" means any child with a disability (as defined in subsection (a)(1)) who—

[(1) is twelve years of age or older; or

[(2) is enrolled in the seventh or higher grade in school.

[OFFICE OF SPECIAL EDUCATION PROGRAMS

[SEC. 603. (a) There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs which shall be the principal agency in the Department for administering and carrying out this Act and other programs and activities concerning the education and training of individuals with disabilities.

[(b)(1) The Office established under subsection (a) shall be headed by a Deputy Assistant Secretary who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services. The position of Deputy Assistant Secretary shall be in grade GS–18 of the General Schedule under section 5104 of title 5, United States Code, and shall be a Senior Executive Service position for the purposes of section 3132(a)(2) of such title.

[(2) In addition to such Deputy Assistant Secretary, there shall be established in such office not less than six positions for persons to assist the Deputy Assistant Secretary, including the position of Associate Deputy Assistant Secretary. Each such position shall be in grade GS–15 of the General Schedule under section 5104 of title 5, United States Code.

[ABROGATION OF STATE SOVEREIGN IMMUNITY

[SEC. 604. (a) A State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act.

[(b) In a suit against a State for a violation of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public entity other than a State.

[(c) The provisions of subsections (a) and (b) shall take effect with respect to violations that occur in whole or part after the date of the enactment of the Education of the Handicapped Act Amendments of 1990.

[ACQUISITION OF EQUIPMENT AND CONSTRUCTION OF NECESSARY FACILITIES

[SEC. 605. (a) In the case of any program authorized by this title, if the Secretary determines that such program will be improved by permitting the funds authorized for such program to be used for the acquisition of equipment and the construction of necessary facilities, the Secretary may authorize the use of such funds for such purposes.

[(b) If, within twenty years after the completion of any construction (except minor remodeling or alteration) for which funds have been paid pursuant to a grant or contract under this title, the facility constructed ceases to be used for the purposes for which it was constructed, the United States, unless the Secretary determines that there is good cause for releasing the recipient of the funds from its obligation, shall be entitled to recover from the applicant or other owner of the facility an amount which bears the same ratio to the then value of the facility as the amount of such Federal funds bore to the cost of the portion of the facility financed with such funds. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which the facility is situated.

[EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES

[SEC. 606. The Secretary shall assure that each recipient of assistance under this Act shall make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act.

[GRANTS FOR THE REMOVAL OF ARCHITECTURAL BARRIERS

[SEC. 607. (a) The Secretary is authorized to make grants and to enter into cooperative agreements with the Secretary of the Interior and with State educational agencies to assist such agencies in making grants to local educational agencies or intermediate educational units to pay part or all of the cost of altering existing buildings and equipment in accordance with standards promulgated under the Act entitled "An Act to insure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped", approved August 12, 1968.

[(b) For the purposes of carrying out the provisions of this section, there are authorized to be appropriated such sums as may be necessary.

[REQUIREMENTS FOR PRESCRIBING REGULATIONS

[SEC. 608. (a) For purposes of complying with section 431(b) of the General Education Provisions Act with respect to regulations promulgated under part B of this Act, the thirty-day period under such section shall be ninety days.

[(b) The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this Act which would procedurally or substantively lessen the protections provided to children with disabilities under this Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections relate to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.

[ELIGIBILITY FOR FINANCIAL ASSISTANCE

[SEC. 609. Effective for fiscal years for which the Secretary may make grants under section 619(b)(1), no State or local educational agency or intermediate educational unit or other public institution or agency may receive a grant under parts C through G which relate exclusively to programs, projects, and activities pertaining to children aged three to five, inclusive, unless the State is eligible to receive a grant under section 619(b)(1).

[ADMINISTRATIVE PROVISIONS APPLICABLE TO PARTS C THROUGH G AND SECTION 618

[SEC. 610. (a) The Secretary shall maintain a process for developing a program plan for the implementation of each of the programs authorized under section 618 and parts C through G. The plan shall include program goals, objectives, strategies, and priorities. In conducting the process, the Secretary shall involve individuals with disabilities, parents, professionals, and representatives of State and local educational agencies, private schools, institutions of higher education, and national organizations who have interest and expertise in the program.

[(b) In awarding grants, contracts, and cooperative agreements under parts C through G, the Secretary, where appropriate, shall require applicants to demonstrate how they will address, in whole or in part, the needs of infants, toddlers, children, and youth with disabilities from minority backgrounds.

[(c) In awarding grants, contracts, or cooperative agreements under parts C through G the Secretary, where appropriate, may require applicants to address the various transitions that a child with a disability may face throughout such child's years in school, including—

[(1) the transition from medical care to special education for those children with disabilities, including chronic health impairments, who may require individualized health-related services to enable such children to participate in, or benefit from, special education;

[(2) the transition between residential placement and community-based special education services; and

[(3) the transition between a separate educational placement and the regular classroom setting.

[(d) The Secretary shall conduct directly, or by contract or cooperative agreement with appropriate entities, independent evaluations of the programs authorized under section 618 and under parts C through G, and may for such purpose use funds appropriated to carry out such provisions. The findings of the evaluators shall be utilized in the planning process under subsection (a) for the purpose of improving the programs. The evaluations shall determine the degree to which the program is being conducted consistent with the program plan and meeting its goals and objectives. The Secretary shall submit to the appropriate committees of the Congress the results of the evaluations required by this subsection.

[(e) The Secretary shall report on the program plans required in subsection (a) and findings from the evaluations under subsection (d) in the annual report to the Congress required under section 618.

[(f) The Secretary shall develop effective procedures for acquiring and disseminating information derived from programs and projects funded under parts C through G, as well as information generated from studies conducted and data collected under section 618.

[(g) The Secretary shall, where appropriate, require recipients of all grants, contracts, and cooperative agreements under parts C through G to prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Programs (TAPP) assisted under parts C and D, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

[(h)(1) The Secretary shall convene, in accordance with paragraph (2), panels of experts who are competent, by virtue of their training or experience, to evaluate proposals under section 618 and parts C through G.

[(2) Panels under paragraph (1) shall be composed of individuals with disabilities, parents of such individuals, individuals from the fields of special education, related services, and other relevant disciplines.

[(3) The Secretary shall convene panels under paragraph (1) for any application that includes a total funding request exceeding $60,000 and may convene or otherwise appoint panels for applications that include funding requests that are less than such amount.

[(4) Panels under paragraph (1) shall include a majority of non-Federal members. Such non-Federal members shall be provided travel and per diem not to exceed the rate provided to other educational consultants used by the Department of Education and shall be provided consultant fees at such a rate.

[(5) The Secretary may use funds available under section 618 and parts C through G to pay expenses and fees of non-Federal members of the panels.

[(i) The Secretary shall conduct at least 1 site visit for each grant, contract, and cooperative agreement receiving $300,000 or more annually under parts C through G.

[(j)(1) With respect to the discretionary programs authorized by parts C through G, the Congress finds as follows:

[(A)(i) The Federal Government must be responsive to the growing needs of an increasingly more diverse society. A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

[(ii) America's racial profile is rapidly changing. While the rate of increase for white Americans is 3.2 percent, the rate of increase for racial and ethnic minorities is much higher: 38.6 percent for Hispanics, 14.6 percent for African-Americans, and 40.1 percent for Asians and other ethnic groups.

[(iii) By the year 2000, this Nation will have 260,000,000 people, one of every three of whom will be either African-American, Hispanic, or Asian-American.

[(iv) Taken together as a group, it is a more frequent phenomenon for minorities to comprise the majority of public school students. Large city school populations are overwhelmingly minority, e.g., Miami, 71 percent; Philadelphia, 73 percent; Baltimore, 80 percent.

[(v) Recruitment efforts within special education at the level of preservice, continuing education, and practice must focus on bringing larger numbers of minorities into the profession in order to provide appropriate practitioner knowledge, role models, and sufficient manpower to address the clearly changing demography of special education.

[(vi) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation. In the Nation's 2 largest school districts, limited-English students make up almost half of all students initially entering school at the kindergarten level. Studies have documented apparent discrepancies in the levels of referral and placement of limited-English proficient children in special education. The Department of Education has found that services provided to limited-English proficient students often do not respond primarily to the pupil's academic needs. These trends pose special challenges for special education in the referral, assessment, and services for our Nation's students from non-English language backgrounds.

[(B)(i) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

[(ii) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

[(iii) Poor African-American children are 3.5 times more likely to be identified by their teacher as mentally retarded than their white counterpart.

[(iv) Although African-Americans represent 12 percent of elementary and secondary enrollments, they constitute 28 percent of total enrollments in special education.

[(v) The drop out rate is 68 percent higher for minorities than for whites.

[(vi) More than 50 percent of minority students in large cities drop out of school.

[(C)(i) The opportunity for full participation in awards for grants and contracts; boards of organizations receiving funds under this Act; and peer review panels; and training of professionals in the area of special education by minority individuals, organizations, and historically Black colleges and universities is essential if we are to obtain greater success in the education of minority children with disabilities.

[(ii) In 1989, of the 661,000 college and university professors, 4.6 percent were African-American and 3.1 percent were Hispanic. Of the 3,600,000 teachers, prekindergarten through high school, 9.4 percent were African-American and 3.9 percent were Hispanic.

[(iii) Students from minority groups comprise more than 50 percent of K–12 public school enrollment in seven States yet minority enrollment in teacher training programs is less than 15 percent in all but six States.

[(iv) As the number of African-American and Hispanic students in special education increases, the number of minority teachers and related service personnel produced in our colleges and universities continues to decrease.

[(v) Ten years ago, 12.5 percent of the United States teaching force in public elementary and secondary schools were members of a minority group. Minorities comprised 21.3 percent of the national population at that time and were clearly underrepresented then among employed teachers. Today, the elementary and secondary teaching force is 3 to 5 percent minority, while one-third of the students in public schools are minority children.

[(vi) As recently as 1984–85, Historically Black Colleges and Universities (HBCUs) supplied nearly half of the African-American teachers in the Nation. However, in 1988, HBCUs received only 2 percent of the discretionary funds for special education and related services personnel training.

[(vii) While African-American students constitute 28 percent of total enrollment in special education, only 11.2 percent of individuals enrolled in preservice training programs for special education are African-American.

[(viii) In 1986–87, of the degrees conferred in education at the B.A., M.A., and Ph.D levels, only 6, 8, and 8 percent, respectively, were awarded to African-American or Hispanic students.

[(D) Minorities and underserved persons are socially disadvantaged because of the lack of opportunities in training and educational programs, undergirded by the practices in the private sector that impede their full participation in the mainstream of society.

[(2) The Congress further finds that these conditions can be greatly improved by providing opportunities for the full participation of minorities through the implementation of the following recommendations:

[(A) Implementation of a policy to mobilize the Nation's resources to prepare minorities for careers in special education and related services.

[(B) This policy should focus on—

[(i) the recruitment of minorities into teaching; and

[(ii) financially assisting HBCUs and other institutions of higher education (whose minority student enrollment is at least 25 percent) to prepare students for special education and related service careers.

[(C)(i) The Secretary shall develop a plan for providing outreach services to the entities described in clause (ii) in order to increase the participation of such entities in competitions for grants, contracts, and cooperative agreements under any of parts C through G.

[(ii) The entities referred to in clause (i) are—

[(I) Historically Black Colleges and Universities and other institutions of higher education whose minority student enrollment is at least 25 percent;

[(II) eligible institutions as defined in section 312 of the Higher Education Act of 1965;

[(III) nonprofit and for-profit agencies at least 51 percent owned or controlled by one or more minority individuals; and

[(IV) underrepresented populations.

[(iii) For the purpose of implementing the plan required in clause (i), the Secretary shall, for each of the fiscal years 1991 through 1994, expend 1 percent of the funds appropriated for the fiscal year involved for carrying out parts C through G.

[(3) The Secretary shall exercise his/her utmost authority, resourcefulness, and diligence to meet the requirements of this subsection.

[(4) Not later than January 31 of each year, starting with fiscal year 1991, the Secretary shall submit to Congress a final report on the progress toward meeting the goals of this subsection during the preceding fiscal year. The report shall include—

[(i) a full explanation of any progress toward meeting the goals of this subsection; and

[(ii) a plan to meet the goals, if necessary.

[PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

[SETTLEMENTS AND ALLOCATIONS

[SEC. 611. (a)

[(1) Except as provided in paragraph (5), the maximum amount of the grant for which a State is entitled under this section for any fiscal year is—

[(A) the sum of—

[(i) the number of children with disabilities in the State, aged 6 through 21, who are receiving special education and related services, as determined under paragraph (3); and

[(ii) if the State is eligible for a grant under section 619, the number of such children in the State, aged 3 through 5; multiplied by

[(B) 40 percent of the average per-pupil expenditure in public elementary and secondary schools in the United States.

[(2) For the purpose of this section, the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

[(3) The number of children with disabilities receiving special education and related services in any fiscal year shall be equal to the number of such children receiving special education and related services on December 1 of the fiscal year preceding the fiscal year for which the determination is made.

[(4) For purposes of paragraph (1)(B), the term "average per pupil expenditure", in the United States, means the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made (or, if satisfactory data for such year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for purposes of this subsection, means the fifty States and the District of Columbia), as the case may be, plus any direct expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

[(5)(A) In determining the allotment of each State under paragraph (1), the Secretary may not count—

[(i) children with disabilities aged three to seventeen, inclusive, in such State under paragraph (1)(A) to the extent the number of such children is greater than 12 percent of the number of all children aged three to seventeen, inclusive, in such State, or the combined percentage of such children counted by the Secretary for the purpose of making fiscal year 1994 allocations under this section and under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as such subpart was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994), whichever is greater, if the State serves all children with disabilities aged three to five, inclusive, in the State pursuant to State law or practice or the order of any court, and [(ii) children with disabilities aged five to seventeen, inclusive, in such State under paragraph (1)(A) to the extent the number of such children is greater than 12 percent of the number of all children aged five to seventeen, inclusive, in such State, or the combined percentage of such children counted by the Secretary for the purpose of making fiscal year 1994 allocations under this section and under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as such subpart was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994), whichever is greater, if the State does not serve all children with disabilities aged three to five, inclusive, in the State pursuant to State law or practice or the order of any court.

[(B) For purposes of subparagraph (A), the number of children aged three to seventeen, inclusive, in any State shall be determined by the Secretary on the basis of the most recent satisfactory data available to the Secretary.

[(b)(1) Notwithstanding subsections (a) and (g), no State shall receive an amount under this section for any of the fiscal years 1995 through 1999 that is less than the sum of the amount such State received for fiscal year 1994 under—

[(A) this section; and

[(B) subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as such subpart was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) for children with disabilities aged 3 through 21.

[(2) If, for fiscal year 1998 or 1999, the number of children determined under subsection (a)(3) for any State is less than the total number of children with disabilities, aged 3 through 21, counted for that State's fiscal year 1994 grants under this section and under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as such subpart was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994), then the amount determined under paragraph (1) for that State shall be reduced by the same percentage by which the number of those children so declined.

[(3)(A) If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under paragraphs (1) and (2) for such year, the Secretary shall ratably reduce the allocations to such States for such year.

[(B) If additional funds become available for making payments under paragraphs (1) and (2) for such fiscal year, allocations that were reduced under subparagraph (A) shall be increased on the same basis as such allocations were reduced.

[(c)

[(1) Of the funds received under subsection (a) by any State for any fiscal year—

[(A) a State may use not more than 25 percent of such funds in accordance with paragraph (2); and

[(B) except as provided in paragraph (4), the State shall distribute at least 75 percent of such funds to local educational agencies and intermediate educational units, in accordance with subsection (d), for use in accordance with priorities established under section 612(3).

[(2)

[(A) From the funds that any State may use under paragraph (1)(A) for any fiscal year, the State—

[(i) may use 5 percent of the funds received under this section or $450,000, whichever is greater, for administrative costs related to carrying out sections 612 and 613; and

[(ii) shall use the remainder—

[(I) to provide support services and direct services, subject to subparagraph (B), in accordance with priorities established under section 612(3); and

[(II) for the administrative costs of monitoring and complaint investigation, but only to the extent that such costs exceed the costs of administration incurred during fiscal year 1985.

[(B) The amount expended by any State from the funds available to such State under paragraph (1)(A) in any fiscal year for the provision of support services or for the provision of direct services shall be matched on a program basis by such State, from funds other than Federal funds, for the provision of support services or for the provision of direct services for the fiscal year involved.

[(3) The provisions of section 613(a)(9) shall not apply with respect to amounts available for use by any State under paragraph (2).

[(4)(A) No funds shall be distributed by any State under this subsection in any fiscal year to any local educational agency or intermediate educational unit in such State if—

[(i) such local educational agency or intermediate educational unit is entitled, under subsection (d), to less than $7,500 for such fiscal year; or

[(ii) such local educational agency or intermediate educational unit has not submitted an application for such funds which meets the requirements of section 614.

[(B) Whenever the provisions of subparagraph (A) apply, the State involved shall use such funds to assure the provision of a free appropriate education to children with disabilities residing in the area served by such local educational agency or such intermediate educational unit. The provisions of paragraph (2)(B) shall not apply to the use of such funds.

[(d)(1) From the total amount of funds available for any fiscal year under subsection (c)(1)(B), the State shall provide to each local educational agency or intermediate educational unit an amount that bears the same ratio to such total amount as the number of children, aged 3 through 21, determined under subsection (a)(3) for such agency or unit bears to the total number of such children determined for all such agencies and units that apply for such funds.

[(2)(A) To the extent necessary, the State—

[(i) shall use funds available under subsection (c)(2)(A)(ii) to ensure that each State agency that received funds for fiscal year 1994 under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as such subpart was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) receives, from the sum of such funds and funds provided under paragraph (1), an amount equal to—

[(I) the number of children, aged 6 through 21, determined under subsection (a)(3) for such agency; multiplied by

[(II) the per-child amount provided under such subpart for fiscal year 1994; and

[(ii) may use such funds to ensure that each local educational agency that received for fiscal year 1994 under such subpart for children who had transferred from a State-owned, State-operated, or State-supported school or program assisted under such subpart receives, from the sum of such funds and funds provided under paragraph (1), an amount for each such child, aged 3 through 21, determined under subsection (a)(3) for such agency, equal to the per-child amount the agency received under such subpart for fiscal year 1994.

[(B) For the purpose of subparagraph (A), the number of children determined under subsection (a)(3) for any State agency or local educational agency shall not exceed the number of children aged 3 through 21 for whom such agency received funds under such subpart for such fiscal year.

[(e)

[(1) The jurisdictions to which this subsection applies are Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with the Government of Palau takes effect).

[(2) Each jurisdiction to which this subsection applies shall be entitled to a grant for the purposes set forth in section 601(c) in an amount equal to an amount determined by the Secretary in accordance with criteria based on respective needs, except that the aggregate of the amount to which such jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 per centum of the aggregate of the amounts available to all States under this part for that fiscal year. If the aggregate of the amounts, determined by the Secretary pursuant to the preceding sentence, to be so needed for any fiscal year exceeds an amount equal to such 1 per centum limitation, the entitlement of each such jurisdiction shall be reduced proportionately until such aggregate does not exceed such 1 per centum limitation.

[(3) The amount expended for administration by each jurisdiction under this subsection shall not exceed 5 per centum of the amount allotted to such jurisdiction for any fiscal year, or $35,000, whichever is greater.

[(f)(1) The Secretary shall make payments to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5–21, inclusive, enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior. In the case of Indian students ages 3–5, inclusive, who are enrolled in programs affiliated with Bureau of Indian Affairs (hereafter in this subsection referred to as "BIA") schools and that are required by the States in which such schools are located to attain or maintain State accreditation, and which schools have such accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school shall be allowed to count those children for the purpose of distribution of the funds provided under this paragraph to the Secretary of the Interior. The Secretary of the Interior shall be responsible for meeting all of the requirements of this part for these children, in accordance with paragraph (3). The amount of such payment for any fiscal year shall be 1 percent of the aggregate amounts available for all States under this section for that fiscal year.

[(2) With respect to all other children aged 3–21, inclusive, on reservations, the State educational agency shall be responsible for ensuring that all of the requirements of this part are implemented.

[(3) The Secretary of the Interior may receive an allotment under paragraph (1) only after submitting to the Secretary of Education an application that—

[(A) meets the appropriate requirements, as determined by the Secretary of Education, of sections 612 (including monitoring and evaluation activities), 613, and 614(a);

[(B) includes a description of how the Secretary of the Interior will coordinate the provision of services under this part with local educational agencies, tribes and tribal organizations, and other private and Federal service providers;

[(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures required under subparagraph (A);

[(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with section 618(b)(1), including data on the number of children and youth with disabilities served and the types and amounts of services provided and needed and this information shall be included in the annual report of the Secretary of Education to Congress required in section 618(g);

[(E) includes an assurance that, by October 1, 1992, the Secretaries of the Interior and Health and Human Services will enter into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations. Such agreement shall provide for the apportionment of responsibilities and costs including, but not limited to, child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical/personal supplies as needed for a child to remain in school or a program; and

[(F) includes an assurance that the Department of the Interior will cooperate with the Department of Education in its exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under this Act, and will fulfill its duties under this Act.

Section 616(a) shall apply to any such application.

[(4)(A) Beginning with funds appropriated under section 611(a) for fiscal year 1992, the Secretary shall, subject to this paragraph, make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortiums of the above to provide for the coordination of assistance for special education and related services for children with disabilities aged 3–5, inclusive, on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be .25 percent of the aggregate amounts available for all States under this section for that fiscal year.

[(B) The Secretary of the Interior shall distribute the total amount of the .25 percent under subparagraph (A) in the following manner:

[(i) For the first fiscal year, each tribe or tribal organization shall receive an amount proportionate to the amount of weighted student units for special education programs for BIA operated or funded schools serving such reservation generated under the formula established under section 1128 of the Education Amendments of 1978, divided by the total number of such students in all BIA operated or funded schools.

[(ii) For each fiscal year thereafter, each tribe or tribal organization shall receive an amount based on the number of children with disabilities, ages 3–5, inclusive, residing on reservations as reported annually divided by the total of such children served by all tribes or tribal organizations.

[(C) To receive a payment under this paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as required to determine the amounts to be allocated under subparagraph (B). This information shall be compiled and submitted to the Secretary of Education.

[(D) The funds received by a tribe or tribal organization shall be used to assist in child find, screening, and other procedures for the early identification of children aged 3–5, inclusive, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

[(E) To be eligible to receive a grant pursuant to subparagraph (A), the tribe or tribal organization shall make a biennial report to the Secretary of the Interior of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year and the estimated number of children needing services during the 2 years following the one in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary of Education required under this subsection. The Secretary of Education may require any additional information from the Secretary of the Interior.

[(F) The Secretary of the Interior shall offer and, on request, provide technical assistance (especially in the areas of child find, diagnosis, and referral) to State and local educational agencies (where appropriate, intermediate educational units), and tribes and tribal organizations. Such assistance may be provided through its divisions and offices at the national and local level.

[(G) None of the funds allocated under this paragraph can be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

[(5) Before January 1, 1992, the Secretary of the Interior shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under this Act. Such plan shall provide for the coordination of services benefiting these children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing such a plan, the Secretary of the Interior shall consult with all interested and involved parties. It shall be based upon the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities. Such plan shall also be distributed upon request to States, State and local educational agencies, and other agencies providing services to infants, toddlers, children, and youth with disabilities, to tribes, and to other interested parties.

[(6) To meet the requirements of sections 613(a)(12) of this Act, the Secretary of the Interior shall establish, within 6 months of the date of the enactment of the Individuals with Disabilities Education Act Amendments of 1991, under the Bureau of Indian Affairs (BIA), an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall—

[(A) assist in the coordination of services within BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, children, and youth with disabilities;

[(B) advise and assist the Secretary of the Interior in the performance of the Secretary's responsibilities described in this subsection;

[(C) develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;

[(D) provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved educational programming for Indian infants, toddlers, children, and youth with disabilities; and

[(E) provide assistance in the preparation of information required under paragraph (3)(D).

[(g)(1)(A) If the sums appropriated under subsection (h) for any fiscal year are not sufficient to pay in full the total of the amounts that all States are eligible to receive under subsection (a), each such amount shall be ratably reduced.

[(B) If additional funds become available for making such payments for any fiscal year, such reduced amounts shall be increased on the same basis as such payments were reduced.

[(C) Any State that receives any such additional funds shall distribute such funds in accordance with this section, except that any State that has used funds available under subsection (c)(2)(A)(ii) for the purposes described in subsection (d)(2) may—

[(i) deduct, from the amount that the State would otherwise be required to make available to local educational agencies and intermediate educational units, the same amount of such additional funds as the State so used; and

[(ii) use such funds in accordance with subsection (c)(2)(A)(ii).

[(2)(A) In any fiscal year for which payments have been reduced and additional funds have not been made available under paragraph (1) to pay in full the amounts for which all States are eligible under this section, each State educational agency shall fix dates by which each local educational agency or intermediate educational unit shall report to the State agency the amount of funds available to such agency under this section that such agency estimates such agency will expend.

[(B) The State educational agency shall, in accordance with this section, reallocate any funds that the State educational agency determines will not be used during the period of availability by local educational agencies and intermediate educational units, and by any such agency or unit to which such funds would be available if such agency or unit applied for such funds under this part, to those local educational agencies and intermediate educational units that the State educational agency determines will need, and be able to use, additional funds to carry out approved programs.

[(h) For grants under subsection (a) there are authorized to be appropriated such sums as may be necessary.

[ELIGIBILITY

[SEC. 612. In order to qualify for assistance under this part in any fiscal year, a State shall demonstrate to the Secretary that the following conditions are met:

[(1) The State has in effect a policy that assures all children with disabilities the right to a free appropriate public education.

[(2) The State has developed a plan pursuant to section 613(b) in effect prior to the date of the enactment of the Education for All Handicapped Children Act of 1975 and submitted not later than August 21, 1975, which will be amended so as to comply with the provisions of this paragraph. Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that—

[(A) there is established (i) a goal of providing full educational opportunity to all children with disabilities, (ii) a detailed timetable for accomplishing such a goal, and (iii) a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet such a goal;

[(B) a free appropriate public education will be available for all children with disabilities between the ages of three and eighteen within the State not later than September 1, 1978, and for all children with disabilities between the ages of three and twenty-one within the State not later than September 1, 1980, except that, with respect to children with disabilities aged three to five and aged eighteen to twenty-one, inclusive, the requirements of this clause shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State;

[(C) all children residing in the State who are disabled, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated, and that a practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services;

[(D) policies and procedures are established in accordance with detailed criteria prescribed under section 617(c); and

[(E) any amendment to the plan submitted by the State required by this section shall be available to parents, guardians, and other members of the general public at least thirty days prior to the date of submission of the amendment to the Secretary.

[(3) The State has established priorities for providing a free appropriate public education to all children with disabilities, which priorities shall meet the timetables set forth in clause (B) of paragraph (2) of this section, first with respect to children with disabilities who are not receiving an education, and second with respect to children with disabilities, within each disability category, with the most severe disabilities who are receiving an inadequate education, and has made adequate progress in meeting the timetables set forth in clause (B) of paragraph (2) of this section.

[(4) Each local educational agency in the State will maintain records of the individualized education program for each child with a disability, and such program shall be established, reviewed, and revised as provided in section 614(a)(5).

[(5) The State has established (A) procedural safeguards as required by section 615, (B) procedures to assure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, and (C) procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

[(6) The State educational agency shall be responsible for assuring that the requirements of this part are carried out and that all educational programs for children with disabilities within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency and shall meet educational standards of the State educational agency. This paragraph shall not be construed to limit the responsibility of agencies other than educational agencies in a State from providing or paying for some or all of the costs of a free appropriate public education to be provided children with disabilities in the State.

[(7) The State shall assure that (A) in carrying out the requirements of this section procedures are established for consultation with individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities and parents or guardians of children with disabilities, and (B) there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to adoption of the policies, programs, and procedures required pursuant to the provisions of this section and section 613.

[STATE PLANS

[SEC. 613. (a) Any State meeting the eligibility requirements set forth in section 612 and desiring to participate in the program under this part shall submit to the Secretary, through its State educational agency, a State plan at such time, in such manner, and containing or accompanied by such information, as the Secretary deems necessary. Each such plan shall—

[(1) set forth policies and procedures designed to assure that funds paid to the State under this part will be expended in accordance with the provisions of this part, with particular attention given to the provisions of sections 611(b), 611(c), 611(d), 612(2), and 612(3);

[(2) provide that programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program under which there is specific authority for the provision of assistance for the education of children with disabilities, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with the goal of providing a free appropriate public education for all children with disabilities, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs;

[(3) describe, consistent with the purposes of this Act and with the comprehensive system of personnel development described in section 676(b)(8), a comprehensive system of personnel development that shall include—

[(A) a description of the procedures and activities the State will undertake to ensure an adequate supply of qualified special education and related services personnel, including—

[(i) the development and maintenance of a system for determining, on an annual basis—

[(I) the number and type of personnel, including leadership personnel, that are employed in the provision of special education and related services, by area of specialization, including the number of such personnel who are employed on an emergency, provisional, or other basis, who do not hold appropriate State certification or licensure; and

[(II) the number and type of personnel, including leadership personnel, needed, and a projection of the numbers of such personnel that will be needed in five years, based on projections of individuals to be served, retirement and other leaving of personnel from the field, and other relevant factors;

[(ii) the development and maintenance of a system for determining, on an annual basis, the institutions of higher education within the State that are preparing special education and related services personnel, including leadership personnel, by area of specialization, including—

[(I) the numbers of students enrolled in such programs, and

[(II) the number who graduated with certification or licensure, or with credentials to qualify for certification or licensure, during the past year; and

[(iii) the development, updating, and implementation of a plan that—

[(I) will address current and projected special education and related services personnel needs, including the need for leadership personnel; and

[(II) coordinates and facilitates efforts among State and local educational agencies, institutions of higher education, and professional associations to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities; and

[(B) a description of the procedures and activities the State will undertake to ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, including—

[(i) a system for the continuing education of regular and special education and related services personnel;

[(ii) procedures for acquiring and disseminating to teachers, administrators, and related services personnel significant knowledge derived from education research and other sources; and

[(iii) procedures for adopting, where appropriate, promising practices, materials, and technology.

[(4) set forth policies and procedures to assure—

[(A) that, to the extent consistent with the number and location of children with disabilities in the State who are enrolled in private elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this part by providing for such children special education and related services; and

[(B) that—

[(i) children with disabilities in private schools and facilities will be provided special education and related services (in conformance with an individualized education program as required by this part) at no cost to their parents or guardian, if such children are placed in or referred to such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State, and

[(ii) in all such instances, the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies;

[(5) set forth policies and procedures which assure that the State shall seek to recover any funds made available under this part for services to any child who is determined to be erroneously classified as eligible to be counted under section 611(a) or section 611(d);

[(6) provide satisfactory assurance that the control of funds provided under this part, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property;

[(7) provide for—

[(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part, and

[(B) keeping such records and affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part;

[(8) provide procedures to assure that final action with respect to any application submitted by a local educational agency or an intermediate educational unit shall not be taken without first affording the local educational agency or intermediate educational unit involved reasonable notice and opportunity for a hearing;

[(9) provide satisfactory assurance that Federal funds made available under this part—

[(A) will not be commingled with State funds, and

[(B) will be so used as to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive in part the requirement of this subparagraph if the Secretary concurs with the evidence provided by the State;

[(10) provide, consistent with procedures prescribed pursuant to section 617(a)(2), satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the State, including any such funds paid by the State to local educational agencies and intermediate educational units;

[(11) provide for procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of children with disabilities (including evaluation of individualized education programs), in accordance with such criteria that the Secretary shall prescribe pursuant to section 617;

[(12) provide that the State has an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, composed of individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities, teachers, parents or guardians of children with disabilities, State and local education officials, and administrators of programs for children with disabilities, which—

[(A) advises the State educational agency of unmet needs within the State in the education of children with disabilities,

[(B) comments publicly on any rules or regulations proposed for issuance by the State regarding the education of children with disabilities and the procedures for distribution of funds under this part, and

[(C) assists the State in developing and reporting such data and evaluations as may assist the Secretary in the performance of the responsibilities of the Secretary under section 618;

[(13) set forth policies and procedures for developing and implementing interagency agreements between the State educational agency and other appropriate State and local agencies to—

[(A) define the financial responsibility of each agency for providing children and youth with disabilities with free appropriate public education, and

[(B) resolve interagency disputes, including procedures under which local educational agencies may initiate proceedings under the agreement in order to secure reimbursement from other agencies or otherwise implement the provisions of the agreement;

[(14) set forth policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including—

[(A) the establishment and maintenance of standards which are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing special education or related services, and

[(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State; and

[(15) set forth policies and procedures relating to the smooth transition for those individuals participating in the early intervention program assisted under part H who will participate in preschool programs assisted under this part, including a method of ensuring that when a child turns age three an individualized education program, or, if consistent with sections 614(a)(5) and 677(d), an individualized family service plan, has been developed and is being implemented by such child's third birthday.

[(b) Whenever a State educational agency provides free appropriate public education for children with disabilities, or provides direct services to such children, such State educational agency shall include, as part of the State plan required by subsection (a) of this section, such additional assurances not specified in such subsection (a) as are contained in section 614(a), except that funds available for the provision of such education or services may be expended without regard to the provisions relating to excess costs in section 614(a).

[(c)(1) The Secretary shall approve any State plan and any modification thereof which—

[(A) is submitted by a State eligible in accordance with section 612; and

[(B) meets the requirements of subsection (a) and subsection (b).

[(2) The Secretary shall disapprove any State plan which does not meet the requirements of paragraph (1), but shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

[(d)(1) If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency is prohibited by law from providing for the participation in special programs of children with disabilities enrolled in private elementary and secondary schools as required by subsection (a)(4), the Secretary shall waive such requirement, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a)(4).

[(2)(A) When the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services an amount per child which may not exceed the Federal amount provided per child under this part to all children with disabilities enrolled in the State for services for the fiscal year preceding the fiscal year for which the determination is made.

[(B) Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates would be necessary to pay the cost of such services.

[(C) Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(4).

[(3)(A) The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why such action should not be taken.

[(B) If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A) of this paragraph, it may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's action, as provided in section 2112 of title 28, United States Code.

[(C) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

[(D) Upon the filing of a petition under subparagraph (B), the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

[(e) This Act shall not be construed to permit a State to reduce medical and other assistance available or to alter eligibility under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities within the State.

[APPLICATION

[SEC. 614. (a) A local educational agency or an intermediate educational unit which desires to receive payments under section 611(d) for any fiscal year shall submit an application to the appropriate State educational agency. Such application shall—

[(1) provide satisfactory assurance that payments under this part will be used for excess costs directly attributable to programs which—

[(A) provide that all children residing within the jurisdiction of the local educational agency or the intermediate educational unit who are disabled, regardless of the severity of their disability, and are in need of special education and related services will be identified, located, and evaluated, and provide for the inclusion of a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving such education and services;

[(B) establish policies and procedures in accordance with detailed criteria prescribed under section 617(c);

[(C) establish a goal of providing full educational opportunities to all children with disabilities, including—

[(i) procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under section 613(a)(3);

[(ii) the provision of, and the establishment of priorities for providing, a free appropriate public education to all children with disabilities, first with respect to handicapped children who are not receiving an education, and second with respect to children with disabilities, within each disability, with the most severe disabilities who are receiving an inadequate education;

[(iii) the participation and consultation of the parents or guardian of such children; and

[(iv) to the maximum extent practicable and consistent with the provisions of section 612(5)(B), the provision of special services to enable such children to participate in regular educational programs;

[(D) establish a detailed timetable for accomplishing the goal described in subclause (C); and

[(E) provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal described in subclause (C);

[(2) provide satisfactory assurance that—

[(A) the control of funds provided under this part, and title to property derived from such funds, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property,

[(B) Federal funds expended by local educational agencies and intermediate educational units for programs under this part—

[(i) shall be used to pay only the excess costs directly attributable to the education of children with disabilities; and

[(ii) shall be used to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of children with disabilities, and in no case to supplant such State and local funds; and

[(C) State and local funds will be used in the jurisdiction of the local educational agency or intermediate educational unit to provide services in program areas that, taken as a whole, are at least comparable to services being provided in areas of such jurisdiction that are not receiving funds under this part;

[(3) provide for—

[(A) furnishing such information (which, in the case of reports relating to performance, is in accordance with specific performance criteria related to program objectives), as may be necessary to enable the State educational agency to perform its duties under this part, including information relating to the educational achievement of children with disabilities participating in programs carried out under this part; and

[(B) keeping such records, and affording such access to such records, as the State educational agency may find necessary to assure the correctness and verification of such information furnished under subparagraph (A);

[(4) provide for making the application and all pertinent documents related to such application available to parents, guardians, and other members of the general public, and provide that all evaluations and reports required under clause (3) shall be public information;

[(5) provide assurances that the local educational agency or intermediate educational unit will establish or revise, whichever is appropriate, an individualized education program for each child with a disability (or, if consistent with State policy and at the discretion of the local educational agency or intermediate educational unit, and with the concurrence of the parents or guardian, an individualized family service plan described in section 677(d) for each child with a disability aged 3 to 5, inclusive) at the beginning of each school year and will then review and, if appropriate, revise, its provisions periodically, but not less than annually;

[(6) provide satisfactory assurance that policies and programs established and administered by the local educational agency or intermediate educational unit shall be consistent with the provisions of paragraph (1) through paragraph (7) of section 612 and section 613(a); and

[(7) provide satisfactory assurance that the local educational agency or intermediate educational unit will establish and maintain procedural safeguards in accordance with the provisions of sections 612(5)(B), 612(5)(C), and 615.

[(b)(1) A State educational agency shall approve any application submitted by a local educational agency or an intermediate educational unit under subsection (a) if the State educational agency determines that such application meets the requirements of subsection (a), except that no such application may be approved until the State plan submitted by such State educational agency under subsection (a) is approved by the Secretary under section 613(c). A State educational agency shall disapprove any application submitted by a local educational agency or an intermediate educational unit under subsection (a) if the State educational agency determines that such application does not meet the requirements of subsection (a).

[(2)(A) Whenever a State educational agency, after reasonable notice and opportunity for a hearing, finds that a local educational agency or an intermediate educational unit, in the administration of an application approved by the State educational agency under paragraph (1), has failed to comply with any requirement set forth in such application, the State educational agency, after giving appropriate notice to the local educational agency or the intermediate educational unit, shall—

[(i) make no further payments to such local educational agency or such intermediate educational unit under section 620 until the State educational agency is satisfied that there is no longer any failure to comply with the requirement involved; or

[(ii) take such finding into account in its review of any application made by such local educational agency or such intermediate educational unit under subsection (a).

[(B) The provisions of the last sentence of section 616(a) shall apply to any local educational agency or any intermediate educational unit receiving any notification from a State educational agency under this paragraph.

[(3) In carrying out its functions under paragraph (1), each State educational agency shall consider any decision made pursuant to a hearing held under section 615 which is adverse to the local educational agency or intermediate educational unit involved in such decision.

[(c)(1) A State educational agency may, for purposes of the consideration and approval of applications under this section, require local educational agencies to submit a consolidated application for payments if such State educational agency determines that any individual application submitted by any such local educational agency will be disapproved because such local educational agency is ineligible to receive payments because of the application of section 611(c)(4)(A)(i) or such local educational agency would be unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of children with disabilities.

[(2)(A) In any case in which a consolidated application of local educational agencies is approved by a State educational agency under paragraph (1), the payments which such local educational agencies may receive shall be equal to the sum of payments to which each such local educational agency would be entitled under section 611(d) if an individual application of any such local educational agency had been approved.

[(B) The State educational agency shall prescribe rules and regulations with respect to consolidated applications submitted under this subsection which are consistent with the provisions of paragraph (1) through paragraph (7) of section 612 and section 613(a) and which provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this part.

[(C) In any case in which an intermediate educational unit is required pursuant to State law to carry out the provisions of this part, the joint responsibilities given to local educational agencies under subparagraph (B) shall not apply to the administration and disbursement of any payments received by such intermediate educational unit. Such responsibilities shall be carried out exclusively by such intermediate educational unit.

[(d) Whenever a State educational agency determines that a local educational agency—

[(1) is unable or unwilling to establish and maintain programs of free appropriate public education which meet the requirements established in subsection (a);

[(2) is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain such programs; or

[(3) has one or more children with disabilities who can best be served by a regional or State center designed to meet the needs of such children;

the State educational agency shall use the payments which would have been available to such local educational agency to provide special education and related services directly to children with disabilities residing in the area served by such local educational agency. The State educational agency may provide such education and services in such manner, and at such locations (including regional or State centers), as it considers appropriate, except that the manner in which such education and services are provided shall be consistent with the requirements of this part.

[(e) Whenever a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities residing in the area served by such agency with State and local funds otherwise available to such agency, the State educational agency may reallocate funds (or such portion of those funds as may not be required to provide such education and services) made available to such agency, pursuant to section 611(d), to such other local educational agencies within the State as are not adequately providing special education and related services to all children with disabilities residing in the areas served by such other local educational agencies.

[(f) Notwithstanding the provisions of subsection (a)(2)(B)(ii), any local educational agency which is required to carry out any program for the education of children with disabilities pursuant to a State law shall be entitled to receive payments under section 611(d) for use in carrying out such program, except that such payments may not be used to reduce the level of expenditures for such program made by such local educational agency from State or local funds below the level of such expenditures for the fiscal year prior to the fiscal year for which such local educational agency seeks such payments.

[TREATMENT OF CHAPTER 1 STATE AGENCIES

[c. 614A. (a) For the purpose of making payments under sections 611 and 619 of this Act, any State agency that received funds for fiscal year 1994 under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as such subpart was in existence on the day preceding the date of enactment of the Improving America's Schools Act of 1994) shall be treated as if the State agency were a local educational agency.

[(b) Any State agency which desires to receive payments under section 611(d) and section 619(c)(3) for any fiscal year shall submit an application to the State educational agency. Such application shall—

[(1) include an assurance that all children with disabilities who are participating in programs and projects funded under this part receive a free appropriate public education, and that such children and their parents are provided all the rights and procedural safeguards described in this part; and

[(2) meet those requirements of section 614 that the Secretary finds appropriate.

[(c) Section 611(c)(4) shall not apply with respect to a State agency that is eligible for a payment under this part by application of this section.

[PROCEDURAL SAFEGUARDS

[SEC. 615. (a) Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this part shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that children with disabilities and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

[(b)(1) The procedures required by this section shall include, but shall not be limited to—

[(A) an opportunity for the parents or guardian of a child with a disability to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

[(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian;

[(C) written prior notice to the parents or guardian of the child whenever such agency or unit—

[(i) proposes to initiate or change, or

[(ii) refuses to initiate or change,

the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

[(D) procedures designed to assure that the notice required by clause (C) fully informs the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

[(E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

[(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

[(c) If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

[(d) Any party to any hearing conducted pursuant to subsections (b) and (c) shall be accorded—

[(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities,

[(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses,

[(3) the right to a written or electronic verbatim record of such hearing, and

[(4) the right to written findings of fact and decisions (which findings and decisions shall be made available to the public consistent with the requirements of section 617(c) and shall also be transmitted to the advisory panel established pursuant to section 613(a)(12)).

[(e)(1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) shall be final, except that any party may bring an action under paragraph (2) of this subsection.

[(2) Any party aggrieved by the findings and decision made under subsection (b) who does not have the right to an appeal under subsection (c), and any party aggrieved by the findings and decision under subsection (c), shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

[(3)(A) Except as provided in subparagraph (B), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

[(B)(i) Except as provided in clause (iii), if the proceedings conducted pursuant to this section involve a child with a disability who is determined to have brought a weapon to school under the jurisdiction of such agency, then the child may be placed in an interim alternative educational setting, in accordance with State law, for not more than 45 days.

[(ii) The interim alternative educational setting described in clause (i) shall be decided by the individuals described in section 602(a)(20).

[(iii) If a parent or guardian of a child described in clause (i) requests a due process hearing pursuant to paragraph (2) of subsection (b), then the child shall remain in the alternative educational setting described in such clause during the pendency of any proceedings conducted pursuant to this section, unless the parents and the local educational agency agree otherwise.

[(iv) For the purpose of this section, the term "weapon" means a firearm as such term is defined in section 921 of title 18, United States Code.

[(4)(A) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

[(B) In any action or proceeding brought under this subsection, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents or guardian of a child or youth with a disability who is the prevailing party.

[(C) For the purpose of this subsection, fees awarded under this subsection shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

[(D) No award of attorneys' fees and related costs may be made in any action or proceeding under this subsection for services performed subsequent to the time of a written offer of settlement to a parent or guardian, if—

[(i) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

[(ii) the offer is not accepted within ten days; and

[(iii) the court or administrative officer finds that the relief finally obtained by the parents or guardian is not more favorable to the parents or guardian than the offer of settlement.

[(E) Notwithstanding the provisions of subparagraph (D), an award of attorneys' fees and related costs may be made to a parent or guardian who is the prevailing party and who was substantially justified in rejecting the settlement offer.

[(F) Whenever the court finds that—

[(i) the parent or guardian, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

[(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, experience, and reputation; or

[(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding,

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this subsection.

[(G) The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of this Act.

[(f) Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, title V of the Rehabilitation Act of 1973, or other Federal statutes protecting the rights of children and youth with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (b)(2) and (c) shall be exhausted to the same extent as would be required had the action been brought under this part.

[WITHHOLDING AND JUDICIAL REVIEW

[SEC. 616. (a) Whenever the Secretary, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or intermediate educational unit affected by any failure described in clause (2)), finds—

[(1) that there has been a failure to comply substantially with any provision of section 612 or section 613, or

[(2) that in the administration of the State plan there is a failure to comply with any provision of this part or with any requirements set forth in the application of a local educational agency or intermediate educational unit approved by the State educational agency pursuant to the State plan, the Secretary—

[(A) shall, after notifying the State educational agency, withhold any further payments to the State under this part, and

[(B) may, after notifying the State educational agency, withhold further payments to the State under the Federal programs specified in section 613(a)(2) within the Secretary's jurisdiction, to the extent that funds under such programs are available for the provision of assistance for the education of children with disabilities.

If the Secretary withholds further payments under clause (A) or clause (B) the Secretary may determine that such withholding will be limited to programs or projects under the State plan, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or intermediate educational units affected by the failure. Until the Secretary is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in clause (1) or clause (2), no further payments shall be made to the State under this part or under the Federal programs specified in section 613(a)(2) within the Secretary's jurisdiction to the extent that funds under such programs are available for the provision of assistance for the education of children with disabilities, or payments by the State educational agency under this part shall be limited to local educational agencies and intermediate educational units whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, local educational agency, or intermediate educational unit in receipt of a notice pursuant to the first sentence of this subsection shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency or unit.

[(b)(1) If any State is dissatisfied with the Secretary's final action with respect to its State plan submitted under section 613, such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

[(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

[(3) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

[ADMINISTRATION

[SEC. 617. (a)(1) In carrying out the Secretary's duties under this part, the Secretary shall—

[(A) cooperate with, and furnish all technical assistance necessary, directly or by grant or contract, to the States in matters relating to the education of children with disabilities and the execution of the provisions of this part;

[(B) provide such short-term training programs and institutes as are necessary;

[(C) disseminate information, and otherwise promote the education of all handicapped children within the States; and

[(D) assure that each State shall, within one year after the date of the enactment of the Education for All Handicapped Children Act of 1975 and every year thereafter, provide certification of the actual number of children with disabilities receiving special education and related services in such State.

[(2) As soon as practicable after the date of the enactment of the Education for All Handicapped Children Act of 1975, the Secretary shall, by regulation, prescribe a uniform financial report to be utilized by State educational agencies in submitting plans under this part in order to assure equity among the States.

[(b) In carrying out the provisions of this part, the Secretary shall issue, not later than January 1, 1977, amend, and revoke such rules and regulations as may be necessary. No other less formal method of implementing such provisions is authorized.

[(c) The Secretary shall take appropriate action, in accordance with the provisions of section 438 of the General Education Provisions Act, to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant to the provisions of this part.

[(d) The Secretary is authorized to hire qualified personnel necessary to conduct data collection and evaluation activities required by subsections (b), (c) and (d) of section 618 and to carry out the Secretary's duties under subsection (a)(1) of this subsection without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates except that no more than twenty such personnel shall be employed at any time.

[EVALUATION AND PROGRAM INFORMATION

[SEC. 618. (a) The Secretary shall, directly or by grant, contract, or cooperative agreement, collect data and conduct studies, investigations, analyses, and evaluations—

[(1) to assess progress in the implementation of this Act;

[(2) to assess the impact and effectiveness of State and local efforts, and efforts by the Secretary of the Interior, to provide—

[(A) free appropriate public education to children and youth with disabilities; and

[(B) early intervention services to infants and toddlers with disabilities; and

[(3) to provide—

[(A) Congress with information relevant to policymaking; and

[(B) State, local, and Federal agencies, including the Department of the Interior, with information relevant to program management, administration, delivery, and effectiveness with respect to such education and early intervention services.

[(b)(1) In carrying out subsection (a), the Secretary, on at least an annual basis (except as provided in subparagraph (E)), shall obtain data concerning programs and projects assisted under this Act and under other Federal laws relating to infants, toddlers, children, and youth with disabilities, and such additional information, from State and local educational agencies, the Secretary of the Interior, and other appropriate sources, including designated lead agencies under part H (except that during fiscal year 1992 such entities may not under this subsection be required to provide data regarding traumatic brain injury or autism), including—

[(A) the number of infants, toddlers, children, and youth with disabilities in each State receiving a free appropriate public education or early intervention services—

[(i) in age groups 0–2 and 3–5, and

[(ii) in age groups 6–11, 12–17, and 18–21, by disability category;

[(B) the number of children and youth with disabilities in each State, by disability category, who—

[(i) are participating in regular educational programs (consistent with the requirements of section 612(5)(B) and 614(a)(1)(C)(iv));

[(ii) are in separate classes, separate schools or facilities, or public or private residential facilities; or

[(iii) have been otherwise removed from the regular education environment;

[(C) the number of children and youth with disabilities exiting the educational system each year through program completion or otherwise, by disability category, for each year of age from age 14 through 21;

[(D) the number and type of personnel that are employed in the provision of—

[(i) special education and related services to children and youth with disabilities, by disability category served; and

[(ii) early intervention services to infants and toddlers with disabilities; and

[(E) at least every three years, using the data collection method the Secretary finds most appropriate, a description of the services expected to be needed, by disability category, for youth with disabilities in age groups 12–17 and 18–21 who have left the educational system.

[(2) Beginning with fiscal year 1993, the Secretary shall obtain and report data from the States under section 613(a)(3)(A), including data addressing current and projected special education and related services needs, and data on the number of personnel who are employed on an emergency, provisional, or other basis, who do not hold appropriate State certification or licensure, and other data for the purpose of meeting the requirements of this subsection pertaining to special education and related services personnel.

[(3) The Secretary shall provide, directly or by grant, contract, or cooperative agreement, technical assistance to State agencies providing the data described in paragraphs (1) and (2) to achieve accurate and comparable information.

[(c)(1) The Secretary shall make grants to, or enter into contracts or cooperative agreements with, State or local educational agencies, institutions of higher education, public agencies, and private nonprofit organizations, and, when necessary because of the unique nature of the study, private-for-profit organizations, for the purpose of conducting studies, analyses, syntheses, and investigations for improving program management, administration, delivery, and effectiveness necessary to provide full educational opportunities and early interventions for all children with disabilities from birth through age 21. Such studies and investigations shall gather information necessary for program and system improvements including—

[(A) developing effective, appropriate criteria and procedures to identify, evaluate, and serve infants, toddlers, children, and youth with disabilities from minority backgrounds for purposes of program eligibility, program planning, delivery of services, program placement, and parental involvement;

[(B) planning and developing effective early intervention services, special education, and related services to meet the complex and changing needs of infants, toddlers, children, and youth with disabilities;

[(C) developing and implementing a comprehensive system of personnel development needed to provide qualified personnel in sufficient number to deliver special education, related services, and early intervention services;

[(D) developing the capacity to implement practices having the potential to integrate children with disabilities, to the maximum extent appropriate, with children who are not disabled;

[(E) effectively allocating and using human and fiscal resources for providing early intervention, special education, and related services;

[(F) strengthening programs and services to improve the progress of children and youth with disabilities while in special education, and to effect a successful transition when such children and youth leave special education;

[(G) achieving interagency coordination to maximize resource utilization and continuity in services provided to infants, toddlers, children, and youth with disabilities;

[(H) strengthening parent-school communication and coordination to improve the effectiveness of planning and delivery of interventions and instruction, thereby enhancing development and educational progress; and

[(I) the identification of environmental, organizational, resource, and other conditions necessary for effective professional practice.

[(2)(A) The studies and investigations authorized under this subsection may be conducted through surveys, interviews, case studies, program implementation studies, secondary data analyses and syntheses, and other appropriate methodologies.

[(B) The studies and investigations conducted under this subsection shall address the information needs of State and local educational agencies for improving program management, administration, delivery, and effectiveness.

[(3) The Secretary shall develop and implement a process for the on-going identification of national program information needed for improving the management, administration, delivery, and effectiveness of programs and services provided under this Act. The process shall identify implementation issues, desired improvements, and information needed by State and local agencies to achieve such improvements, and shall be conducted in cooperation with State educational agencies that can ensure broad-based statewide input from each cooperating State. The Secretary shall publish for public comment in the Federal Register every 3 years a program information plan describing such information needs. Such program information plan shall be used to determine the priorities for, and activities carried out under, this subsection to produce, organize, and increase utilization of program information. Such program information plan shall be included in the annual report submitted under section 618 every 3 years.

[(4) In providing funds under this subsection, the Secretary shall require recipients to prepare their procedures, findings, and other relevant information in a form that will maximize their dissemination and use, especially through dissemination networks and mechanisms authorized by this Act, and in a form for inclusion in the annual report to Congress authorized under subsection (g).

[(d)(1) The Secretary shall enter into cooperative agreements with State educational agencies and other State agencies to carry out studies to assess the impact and effectiveness of programs, policies, and procedures assisted under this Act.

[(2) The agreements referred to in paragraph (1) shall—

[(A) provide for the payment of not more than 60 percent of the total cost of studies conducted by a participating State agency to assess the impact and effectiveness of this Act; and

[(B) be developed in consultation with the State Advisory Panel established under section 613(a)(12), local educational agencies, and others involved in, or concerned with, the education of children and youth with disabilities and the provision of early intervention services to infants and toddlers with disabilities.

[(3) The Secretary shall provide technical assistance to participating State agencies in the implementation of the study design, analysis, and reporting procedures.

[(e)(1) The Secretary shall by grant, contract, or cooperative agreement, provide for special studies to assess progress in the implementation of this Act, and to assess the impact and effectiveness of State and local efforts and efforts by the Secretary of the Interior to provide free appropriate public education to children and youth with disabilities, and early intervention services to infants and toddlers with disabilities. Reports from such studies shall include recommendations for improving programs and services to such individuals. The Secretary shall, beginning in fiscal year 1993 and for every third year thereafter, submit to the appropriate committees of each House of the Congress and publish in the Federal Register proposed priorities for review and comment.

[(2) In selecting priorities for fiscal years 1991 through 1994, the Secretary may give first consideration to—

[(A) completing a longitudinal study of a sample of students with disabilities, examining—

[(i) the full range of disabling conditions;

[(ii) the educational progress of students with disabilities while in special education; and

[(iii) the occupational, educational, and independent living status of students with disabilities after graduating from secondary school or otherwise leaving special education.

[(B) conducting pursuant to this subsection a nationally representative study focusing on the types, number, and intensity of related services provided to children with disabilities by disability category.

[(C) conducting pursuant to this subsection a study that examines the degree of disparity among States with regard to the placement in various educational settings of children and youth with similar disabilities, especially those with mental retardation, and, to the extent that such disparity exists, the factors that lead such children and youth to be educated in significantly different educational settings.

[(D) conducting pursuant to this subsection a study that examines the factors that have contributed to the decline in the number of children classified as mentally retarded since the implementation of this Act, and examines the current disparity among States in the percentage of children so classified.

[(E) conducting pursuant to this subsection a study that examines the extent to which out-of-community residential programs are used for children and youth who are seriously emotionally disturbed, the factors that influence the selection of such placements, the degree to which such individuals transition back to education programs in their communities, and the factors that facilitate or impede such transition.

[(F) conducting pursuant to this subsection a study that examines (i) the factors that influence the referral and placement decisions and types of placements, by disability category and English language proficiency, of minority children relative to other children, (ii) the extent to which these children are placed in regular education environments, (iii) the extent to which the parents of these children are involved in placement decisions and in the development and implementation of the individualized education program and the results of such participation, and (iv) the type of support provided to parents of these children that enable these parents to understand and participate in the educational process.

[(f) The Secretary shall make grants to, or enter into contracts or cooperative agreements with, State or local educational agencies, institutions of higher education, other public agencies, and private nonprofit organizations to support activities that organize, synthesize, interpret, and integrate information obtained under subsections (c) and (e) with relevant knowledge obtained from other sources. Such activities shall include the selection and design of content, formats, and means for communicating such information effectively to specific or general audiences, in order to promote the use of such information in improving program administration and management, and service delivery and effectiveness.

[(g)(1)(A) The Secretary is authorized to conduct activities, directly or by grant, contract, or cooperative agreement, to prepare an annual report on the progress being made toward the provision of—

[(i) a free appropriate public education to all children and youth with disabilities; and

[(ii) early intervention services for infants and toddlers with disabilities.

[(B) Not later than 120 days after the close of each fiscal year, the Secretary shall transmit a copy of the report authorized under subparagraph (A) to the appropriate committees of each House of Congress. The annual report shall be published and disseminated in sufficient quantities to the education and disability communities and to other interested parties.

[(2) The Secretary shall include in each annual report under paragraph (1)—

[(A) a compilation and analysis of data gathered under subsection (b) and under part H; and

[(B) a description of findings and determinations resulting from monitoring reviews of State implementation of this part.

[(3) In the annual report under paragraph (1) for fiscal year 1991 (which is published in 1992) and for every third year thereafter, the Secretary shall include in the annual report—

[(A) an index of all current projects funded under parts C through G; and

[(B) data reported under sections 622 and 634.

[(4) The Secretary shall include in each annual report under paragraph (1) the results of research and related activities conducted under part E that the Secretary determines are relevant to the effective implementation of this Act.

[(5) The Secretary shall, in consultation with the National Council on Disability and the Bureau of Indian Affairs Advisory Committee for Exceptional Children, include a description of the status of early intervention services for infants and toddlers with disabilities from birth through age 2, and special education and related services to children with disabilities from 3 through 5 years of age (including those receiving services through Head Start, developmental disabilities programs, crippled children's services, mental health/mental retardation agencies, and State child-development centers and private agencies under contract with local schools).

[(h) There are authorized to be appropriated $12,000,000 for fiscal year 1991 and such sums as may be necessary for fiscal years 1992 through 1994 to carry out the purposes of this section and not more than 30 percent may be used to carry out the purposes of subsection (e) of this section.

[PRESCHOOL GRANTS

[SEC. 619. (a)(1) For fiscal years 1987 through 1989 (or fiscal year 1990 if the Secretary makes a grant under this paragraph for such fiscal year) the Secretary shall make a grant to any State which—

[(A) has met the eligibility requirements of section 612,

[(B) has a State plan approved under section 613, and

[(C) provides special education and related services to children with disabilities aged three to five, inclusive.

[(2)(A) For fiscal year 1987 the amount of a grant to a State under paragraph (1) may not exceed—

[(i) $300 per child with a disability aged three to five, inclusive, who received special education and related services in such State as determined under section 611(a)(3), or

[(ii) if the amount appropriated under subsection (e) exceeds the product of $300 and the total number of children with disabilities aged three to five, inclusive, who received special education and related services as determined under section 611(a)(3)—

[(I) $300 per child with a disability aged three to five, inclusive, who received special education and related services in such State as determined under section 611(a)(3), plus

[(II) an amount equal to the portion of the appropriation available after allocating funds to all States under subclause (I) (the excess appropriation) divided by the estimated increase, from the preceding fiscal year, in the number of children with disabilities aged three to five, inclusive, who will be receiving special education and related services in all States multiplied by the estimated increase in the number of such children in such State.

[(B) For fiscal year 1988, funds shall be distributed in accordance with clause (i) or (ii) of paragraph (2)(A), except that the amount specified therein shall be $400 instead of $300.

[(C) For fiscal year 1989, funds shall be distributed in accordance with clause (i) or (ii) of paragraph (2)(A), except that the amount specified therein shall be $500 instead of $300.

[(D) If the Secretary makes a grant under paragraph (1) for fiscal year 1990, the amount of a grant to a State under such paragraph may not exceed $1,000 per child with a disability aged three to five, inclusive, who received special education and related services in such State as determined under section 611(a)(3).

[(E) If the actual number of additional children served in a fiscal year differs from the estimate made under subparagraph (A)(ii)(II), the Secretary shall adjust (upwards or downwards) a State's allotment in the subsequent fiscal year.

[(F)(i) The amount of a grant under subparagraph (A), (B), or (C) to any State for a fiscal year may not exceed $3,800 per estimated child with a disability aged three to five, inclusive, who will be receiving or child with a disability, age three to five, inclusive, who is receiving special education and related services in such State.

[(ii) If the amount appropriated under subsection (e) for any fiscal year exceeds the amount of grants which may be made to the States for such fiscal year, the excess amount appropriated shall remain available for obligation under this section for 2 succeeding fiscal years.

[(3) To receive a grant under paragraph (1) a State shall make an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

[(b)(1) For fiscal year 1990 (or fiscal year 1991 if required by paragraph (2)) and fiscal years thereafter the Secretary shall make a grant to any State which—

[(A) has met the eligibility requirements of section 612, and

[(B) has a State plan approved under section 613 which includes policies and procedures that assure the availability under the State law and practice of such State of a free appropriate public education for all children with disabilities aged three to five, inclusive, and for any two-year-old children provided services by the State under subsection (c)(2)(B)(iii) or by a local educational agency or intermediate educational unit under subsection (f)(2).

(2) The Secretary may make a grant under paragraph (1) only for fiscal year 1990 and fiscal years thereafter, except that if—

[(A) the aggregate amount that was appropriated under subsection (e) for fiscal years 1987, 1988, and 1989 was less than $656,000,000, or

[(B) the amount appropriated for fiscal year 1990 under subsection (e) is less than $306,000,000,

the Secretary may not make a grant under paragraph (1) until fiscal year 1991 and shall make a grant under subsection (a)(1) for fiscal year 1990.

[(3) The amount of any grant to any State under paragraph (1) for any fiscal year may not exceed $1,500 for each child with a disability in such State aged three to five, inclusive.

[(4) To receive a grant under paragraph (1) a State shall make an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

[(c)(1) For fiscal year 1987, a State which receives a grant under subsection (a)(1) shall—

[(A) distribute at least 70 percent of such grant to local educational agencies and intermediate educational units in such State in accordance with paragraph (3), except that in applying such section only children with disabilities aged three to five, inclusive, shall be considered,

[(B) use not more than 25 percent of such grant for the planning and development of a comprehensive delivery system for which a grant could have been made under section 623(b) in effect through fiscal year 1987 and for direct and support services for children with disabilities, and

[(C) use not more than 5 percent of such grant for administrative expenses related to the grant.

[(2) For fiscal years beginning after fiscal year 1987, a State which receives a grant under subsection (a)(1) or (b)(1) shall—

[(A) distribute at least 75 percent of such grant to local educational agencies and intermediate educational units in such State in accordance with paragraph (3), except that in applying such section only children with disabilities aged three to five, inclusive, shall be considered,

[(B) use not more than 20 percent of such grant—

[(i) for planning and development of a comprehensive delivery system,

[(ii) for direct and support services for children with disabilities, aged 3 to 5, inclusive, and

[(iii) at the State's discretion, to provide a free appropriate public education, in accordance with this Act, to 2-year-old children with disabilities who will reach age 3 during the school year, whether or not such children are receiving, or have received, services under part H, and

[(C) use not more than 5 percent of such grant for administrative expenses related to the grant.

[(3) From the amount of funds available to local educational agencies and intermediate educational units in any State under this section, each local educational agency or intermediate educational unit shall be entitled to—

[(A) an amount which bears the same ratio to the amount available under subsection (a)(2)(A)(i) or subsection (a)(2)(A)(ii)(I), as the case may be, as the number of children with disabilities aged three to five, inclusive, who received special education and related services as determined under section 611(a)(3) in such local educational agency or intermediate educational unit bears to the aggregate number of children with disabilities aged three to five, inclusive, who received special education and related services in all local educational agencies and intermediate educational units in the State entitled to funds under this section, and

[(B) to the extent funds are available under subsection (a)(2)(A)(ii)(II), an amount which bears the same ratio to the amount of such funds as the estimated number of additional children with disabilities aged three to five, inclusive, who will be receiving special education and related services in such local educational agency or intermediate educational unit bears to the aggregate number of such children in all local educational agencies and intermediate educational units in the State entitled to funds under this section.

[(d) If the sums appropriated under subsection (e) for any fiscal year for making payments to States under subsection (a)(1) or (b)(1) are not sufficient to pay in full the maximum amounts which all States may receive under such subsection for such fiscal year, the maximum amounts which all States may receive under such subsection for such fiscal year shall be ratably reduced by first ratably reducing amounts computed under the excess appropriation provision of subsection (a)(2)(A)(ii)(II). If additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, the reduced maximum amounts shall be increased on the same basis as they were reduced.

[(e) For grants under subsections (a)(1) and (b)(1) there are authorized to be appropriated such sums as may be necessary.

[(f) Each local educational agency or intermediate educational unit receiving funds under this section—

[(1) shall use such funds to provide special education and related services to children with disabilities aged 3 to 5, inclusive, and

[(2) may, if consistent with State policy, use such funds to provide a free appropriate public education, in accordance with this part, to 2-year-old children with disabilities who will reach age 3 during the school year, whether or not such children are receiving, or have received, services under part H.

[(g) Part H of this Act does not apply to any child with disabilities receiving a free appropriate public education, in accordance with this part, with funds received under this section.

[PAYMENTS

[SEC. 620. (a) The Secretary shall make payments to each State in amounts which the State educational agency of such State is eligible to receive under this part. Any State educational agency receiving payments under this subsection shall distribute payments to the local educational agencies and intermediate educational units of such State in amounts which such agencies and units are eligible to receive under this part after the State educational agency has approved applications of such agencies or units for payments in accordance with section 614(b).

[(b) Payments under this part may be made in advance or by way of reimbursement and in such installments as the Secretary may determine necessary.

[PART C—CENTERS AND SERVICES TO MEET SPECIAL NEEDS OF INDIVIDUALS WITH DISABILITIES

[REGIONAL RESOURCE AND FEDERAL CENTERS

[SEC. 621. (a) The Secretary may make grants to, or enter into contracts or cooperative agreements with, institutions of higher education, public agencies, private nonprofit organizations, State educational agencies, or combinations of such agencies or institutions (which combinations may include one or more local educational agencies) within particular regions of the United States, to pay all or part of the cost of the establishment and operation of regional resource centers that focus on special education and related services and early intervention services. Each regional resource center shall provide consultation, technical assistance, and training, as requested, to State educational agencies and through such State educational agencies to local educational agencies and to other appropriate public agencies providing special education and related services and early intervention services. The services provided by a regional resource center shall be consistent with the priority needs identified by the States served by the center. Each regional resource center established or operated under this section shall—

[(1) assist in identifying and solving persistent problems in providing quality special education and related services for children and youth with disabilities and early intervention services to infants and toddlers with disabilities and their families,

[(2) assist in developing, identifying, and replicating successful programs and practices which will improve special education and related services to children and youth with disabilities and their families and early intervention services to infants and toddlers with disabilities and their families,

[(3) gather and disseminate information to all State educational agencies within the region and coordinate activities with other centers assisted under this subsection and other relevant programs and projects conducted under parts C through G and by the Department of Education,

[(4) assist in the improvement of information dissemination to and training activities for professionals and parents of infants, toddlers, children, and youth with disabilities, and

[(5) provide information to and training for agencies, institutions, and organizations, regarding techniques and approaches for submitting applications for grants, contracts, and cooperative agreements under this part and parts D through G.

[(b) In determining whether to approve an application for a project under subsection (a), the Secretary shall utilize criteria for setting criteria that are consistent with the needs identified by States within the region served by such center, consistent with requirements established by the Secretary under subsection (f), and, to the extent appropriate, consistent with requirements under section 610, and shall consider the need for such a center in the region to be served by the applicant and the capability of the applicant to fulfill the responsibilities under subsection (a).

[(c) Each regional resource center shall report a summary of materials produced or developed and the summaries reported shall be included in the annual report to Congress required under section 618.

[(d) The Secretary may establish one coordinating technical assistance center focusing on national priorities established by the Secretary to assist the regional resource centers in the delivery of technical assistance, consistent with such national priorities. Such coordinating technical assistance center is authorized to—

[(1) provide information to, and training for, agencies, institutions, and organizations, regarding techniques and approaches for submitting applications for grants, contracts, and cooperative agreements under this part and parts D through G, and shall make such information available to the regional resource centers on request;

[(2) give priority to providing technical assistance concerning the education of children with disabilities from minority backgrounds;

[(3) exchange information with, and, where appropriate, cooperate with, other centers addressing the needs of children with disabilities from minority backgrounds; and

[(4) provide assistance to State educational agencies, through the regional resource centers, for the training of hearing officers.

[(e) Before using funds made available in any fiscal year to carry out this section for purposes of subsection (d), not less than the amount made available in the previous fiscal year for regional resource centers under subsection (a) shall be made available for such centers and in no case shall more than $500,000 be made available for the center under subsection (d).

[(f)(1) The Secretary shall develop guidelines and criteria for the operation of Regional and Federal Resource Centers. In developing such criteria and guidelines, the Secretary shall establish a panel representing the Office of Special Education Programs staff, State special education directors, representatives of disability advocates, and, when appropriate, consult with the regional resource center directors.

[(2) Such guidelines and criteria shall include—

[(A) a description of how the Federal and Regional Resource Centers Program will be administered by the Secretary;

[(B) a description of the geographic region each Center is expected to serve;

[(C) a description of the role of a Center in terms of expected leadership and dissemination efforts;

[(D) a description of expected relationships with State agencies, research and demonstration centers, and with other entities deemed necessary;

[(E) a description of how a Center will be evaluated; and

[(F) other guidelines and criteria deemed necessary.

[(3) The Secretary shall publish in the Federal Register by July 1, 1991, for review and comment, proposed and (then following such review and comment) final guidelines developed by the panel.

[SERVICES FOR DEAF-BLIND CHILDREN AND YOUTH

[SEC. 622. (a)(1) The Secretary is authorized to make grants to, or to enter into cooperative agreements or contracts with, public or nonprofit private agencies, institutions, or organizations to assist State educational agencies, local educational agencies, and designated lead agencies under part H to—

[(A) assure deaf-blind infants, toddlers, children and youth provision of special education, early intervention, and related services as well as vocational and transitional services; and

[(B) make available to deaf-blind youth (who are in the process of transitioning into adult services) programs, services, and supports to facilitate such transition, including assistance related to independent living and competitive employment.

[(2) For purposes of this section, the term "deaf-blind", with respect to children and youth, means having auditory and visual impairments, the combination of which creates such severe communication and other developmental and learning needs that they cannot be appropriately educated in special education programs solely for children and youth with hearing impairments, visual impairments, or severe disabilities, without supplementary assistance to address their educational needs due to these dual, concurrent disabilities.

[(3)(A) A grant, cooperative agreement, or contract may be made under paragraph (1)(A) only for programs providing—

[(i) technical assistance to agencies, institutions, or organizations providing educational or early intervention services to deaf-blind infants, toddlers, children, or youth;

[(ii) preservice or inservice training to paraprofessionals, professionals, or related services personnel preparing to serve, or serving, deaf-blind infants, toddlers, children, or youth;

[(iii) replication of successful innovative approaches to providing educational, early intervention, or related services to deaf-blind infants, toddlers, children, and youth;

[(iv) pilot projects that are designed to—

[(I) expand local educational agency capabilities by providing services to deaf-blind children and youth that supplement services already provided to children and youth through State and local resources; and

[(II) encourage eventual assumption of funding responsibility by State and local authorities;

[(v) the development, improvement, or demonstration of new or existing methods, approaches, or techniques that contribute to the adjustment and education of deaf-blind infants, toddlers, children, and youth; or

[(vi) facilitation of parental involvement in the education of their deaf-blind infants, toddlers, children, and youth.

[(B) The programs described in subparagraph (A) may include—

[(i) the diagnosis and educational evaluation of infants, toddlers, children, and youth who are likely to be diagnosed as deaf-blind;

[(ii) programs of adjustment, education, and orientation for deaf-blind infants, toddlers, children, and youth; and

[(iii) consultative, counseling, and training services for the families of deaf-blind infants, toddlers, children, and youth.

[(4) A grant, cooperative agreement, or contract pursuant to paragraph (1)(B) may be made only for programs providing (A) technical assistance to agencies, institutions, and organizations that are preparing deaf-blind adolescents for adult placements, or that are preparing to receive deaf-blind young adults into adult living and work environments, or that serve, or propose to serve, deaf-blind individuals; (B) training or inservice training to paraprofessionals or professionals serving, or preparing to serve, such individuals; and (C) assistance in the development or replication of successful innovative approaches to providing rehabilitative, supervised, semisupervised, or independent living programs.

[(5) In carrying out this subsection, the Secretary is authorized to enter into a number of grants or cooperative agreements to establish and support single and multi-State centers for the provision of technical assistance and pilot supplementary services, for the purposes of program development and expansion, for children and youth with deaf-blindness and their families.

[(b) The Secretary is also authorized to enter into a limited number of cooperative agreements or contracts to establish and support regional programs for the provision of technical assistance in the education of deaf-blind children and youth.

[(c)(1) Programs supported under this section shall report annually to the Secretary on (A) the numbers of deaf-blind children and youth served by age, severity, sex, and nature of deaf-blindness; (B) the number of paraprofessionals, professionals, and family members directly served by each activity; (C) the types of services provided and the setting in which the services are provided; and (D) student outcomes, where appropriate.

[(2) The Secretary shall examine the number of deaf-blind children and youth (A) reported under subparagraph (c)(1)(A) and by the States; (B) served by the programs under part B of this Act; and (C) the Deaf-Blind Registry of each State. The Secretary shall revise the count of deaf-blind children and youth to reflect the most accurate count.

[(3) The Secretary shall summarize these data for submission in the annual report required under section 618.

[(d) The Secretary shall make a grant, or enter into a contract or cooperative agreement, for a national clearinghouse for children and youth with deaf-blindness—

[(1) to identify, coordinate, and disseminate information on deaf-blindness, emphasizing information concerning effective practices in working with deaf-blind infants, toddlers, children, and youth;

[(2) to interact with educators, professional groups, and parents to identify areas for programming, materials development, training, and expansion of specific services;

[(3) to maintain a computerized data base on local, regional, and national resources; and

[(4) to respond to information requests from professionals, parents, and members of the community.

[(e) In carrying out this section, the Secretary shall take into consideration the availability and quality of existing services for deaf-blind infants, toddlers, children, and youth in the country, and, to the extent practicable, ensure that all parts of the country have an opportunity to receive assistance under this section.

[(f) The Secretary may make grants to, or enter into contracts or cooperative agreements with organizations or public or nonprofit private agencies, as determined by the Secretary to be appropriate, to address the needs of children and youth with deaf-blindness, for—

[(1) research to identify and meet the full range of special needs of such children and youth; and

[(2) the development and demonstration of new, or improvements in existing methods, approaches, or techniques that would contribute to the adjustment and education of children and youth with deaf-blindness.

[EARLY EDUCATION FOR CHILDREN WITH DISABILITIES

[SEC. 623. (a)(1) The Secretary may arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations, for the development and operation of experimental, demonstration, and outreach preschool and early intervention programs for children with disabilities, including individuals who are at risk of having substantial developmental delays if early intervention services are not provided, which the Secretary determines show promise of promoting a comprehensive and strengthened approach to the special needs of these children. Such programs shall include activities and services designed to—

[(A) facilitate the intellectual, emotional, physical, mental, social, speech or other communication mode, language development, and self-help skills of such children,

[(B) provide family education and include a parent or their representative of such child, as well as encourage the participation of the parents of such children in the development and operation of any such program,

[(C) acquaint the community to be served by any such program with the special needs and potentialities of such children,

[(D) offer training about exemplary models and practices, including interdisciplinary models and practices, to State and local personnel who provide services to children with disabilities from birth through age 8 and to the parents of such children,

[(E) support the adoption of exemplary models and practices in States and local communities, including the involvement of adult role models with disabilities at all levels of the program,

[(F) facilitate and improve the early identification of infants and toddlers with disabilities or those infants and toddlers at risk of having developmental disabilities,

[(G) facilitate the transition of infants with disabilities or infants at risk of having developmental delays, from medical care to early intervention services, and the transition from early intervention services to preschool special education or regular education services (especially where the lead agency for early intervention programs under part H is not the State educational agency),

[(H) promote the use of assistive technology devices and assistive technology services, where appropriate, to enhance the development of infants and toddlers with disabilities, [(I) facilitate and improve outreach to low-income, minority, rural, and other underserved populations eligible for assistance under parts B and H,

[(J) support statewide projects in conjunction with a State's application under part H and a State's plan under part B, to change the delivery of early intervention services to infants and toddlers with disabilities, and to change the delivery of special education and related services to preschool children with disabilities, from segregated to integrated environments, and

[(K) increase the understanding of, and address, the early intervention and preschool needs of children exposed prenatally to maternal substance abuse.

[(2) Programs authorized by paragraph (1) shall be coordinated with similar programs in the schools operated or supported by State or local educational agencies of the community to be served and with similar programs operated by other public agencies in such community.

[(3) As much as is feasible, programs assisted under paragraph (1) shall be geographically dispersed throughout the Nation in urban as well as rural areas.

[(4)(A) Except as provided in subparagraph (B), no arrangement under paragraph (1) shall provide for the payment of more than 90 percent of the total annual costs of development, operation, and evaluation of any program. Non-Federal contributions may be in cash or in kind, fairly evaluated, including plant, equipment, and services.

[(B) The Secretary may waive the requirement of subparagraph (A) in the case of an arrangement entered into under paragraph (1) with governing bodies of Indian tribes located on Federal or State reservations and with consortia of such bodies.

[(b) The Secretary shall fund up to 5 grants to States for 3 years for the purpose of establishing an inter-agency, multi-disciplinary, and coordinated statewide system for the identification, tracking, and referral to appropriate services for all categories of children who are biologically and/or environmentally at-risk of having developmental delays. To the extent feasible, such grants shall be geographically dispersed throughout the Nation in urban and rural areas. Each grantee must—

[(1) create a data system within the first year to document the numbers and types of at-risk children in the State and that develops linkages with all appropriate existing child data and tracking systems that assist in providing information;

[(2) coordinate activities with the child find component required under parts B and H of this Act;

[(3) demonstrate the involvement of the lead agency and the State interagency coordinating council under part H as well as the State educational agency under part B;

[(4) coordinate with other relevant prevention activities across appropriate service agencies, organizations, councils, and commissions;

[(5) define an appropriate service delivery system based on children with various types of at-risk factors;

[(6) document the need for additional services as well as barriers; and

[(7) disseminate findings and information in the manner prescribed in section 610(g).

[(c) The Secretary shall arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations for the establishment of a technical assistance development system to assist entities operating experimental, demonstration, and outreach programs and to assist State agencies to expand and improve services provided to children with disabilities. This technical assistance development system shall provide assistance to parents of and advocates for infants, toddlers, and children with disabilities, as well as direct service and administrative personnel involved with such children. Information from the system should be aggressively disseminated through established information networks and other mechanisms to ensure both an impact and benefits at the community level. The Secretary shall ensure that the technical assistance provided under this subsection includes assistance to part H State agencies on procedures for use by primary referral sources in referring a child to the appropriate agency within the system for evaluation, assessment, or service.

[(d) The Secretary shall arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations for the establishment of early childhood research institutes to carry on sustained research to generate and disseminate new information on preschool and early intervention for children with disabilities and their families. Such institutes shall disseminate this information in the manner prescribed in section 610(g).

[(e) The Secretary may make grants to, or enter into contracts or cooperative agreements under this section with, such organizations or institutions, as are determined by the Secretary to be appropriate, for research to identify and meet the full range of special needs of children with disabilities and for training of personnel for programs specifically designed for children with disabilities, including programs to integrate children with disabilities into regular preschool programs.

[(f) At least one year before the termination of a grant, contract, or cooperative agreement made or entered into under subsections (c) and (d), the Secretary shall publish in the Federal Register a notice of intent to accept applications for such a grant, contract, or cooperative agreement contingent on the appropriation of sufficient funds by Congress.

[(g) For purposes of this section the term "children with disabilities" includes children from birth through eight years of age, including infants and toddlers with disabilities.

[(h) The Secretary may make grants to, or enter into contracts or cooperative agreements with, institutions of higher education and nonprofit private organizations to synthesize the knowledge developed under this section and organize, integrate, and present such knowledge so it can be incorporated and imparted to parents, professionals, and others providing or preparing to provide preschool or early intervention services and to persons designing preschool or early intervention programs.

[PROGRAMS FOR CHILDREN WITH SEVERE DISABILITIES

[SEC. 624. (a) The Secretary may make grants to, or enter into contracts or cooperative agreements with, appropriate public agencies and nonprofit organizations to address the special education, related services, early intervention, and integration needs of infants, toddlers, children, and youth with severe disabilities through—

[(1) research to identify and meet the full range of special education, related services, and early intervention needs of such children and youth with disabilities, including their need for transportation to and from school,

[(2) the development or demonstration of new, or improvements in existing, methods, approaches, or techniques which would contribute to the adjustment and education of such children and youth with disabilities,

[(3) training of special and regular education, related services, and early intervention personnel for programs specifically designed for such infants, toddlers, children and youth, including training of regular teachers, instructors, and administrators in strategies (the goal of which is to serve infants, toddlers, children, and youth with disabilities) that include integrated settings for educating such children along side their nondisabled peers,

[(4) dissemination of materials and information about practices found effective in working with such children and youth by utilizing existing networks as prescribed in section 610(g) and

[(5) statewide projects, in conjunction with the State's plan under part B, to improve the quality of special education and related services for children and youth with severe disabilities, and to change the delivery of those services from segregated to integrated environments.

[(b) The Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with, public or private nonprofit private agencies, institutions, or organizations for the development and operation of extended school year demonstration programs for infants, toddlers, children, and youth with severe disabilities.

[(c) In making grants and entering into contracts and cooperative agreements under subsection (a), the Secretary shall ensure that the activities funded under such grants, contracts, or cooperative agreements will be coordinated with similar activities funded from grants and contracts under other sections of this Act.

[(d) To the extent feasible, programs authorized by subsection (a) shall be geographically dispersed throughout the Nation in urban and rural areas.

[(e) In awarding such grants and contracts under this section, the Secretary shall include a priority on programs that increase the likelihood that these children and youth will be educated with their nondisabled peers.

[POSTSECONDARY EDUCATION

[SEC. 625. (a)(1) The Secretary may make grants to, or enter into contracts with, State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities. Such model programs may include joint projects that coordinate with special education and transition services.

[(2) In making grants or contracts on a competitive basis under paragraph (1), the Secretary shall give priority consideration to 4 regional centers for the deaf and to model programs for individuals with disabling conditions other than deafness—

[(A) for developing and adapting programs of postsecondary, vocational, technical, continuing, or adult education to meet the special needs of individuals with disabilities, and

[(B) for programs that coordinate, facilitate, and encourage education of individuals with disabilities with their nondisabled peers; and

[(C) for outreach activities that include the provision of technical assistance to strengthen efforts in the development, operation, and design of model programs that are adapted to the special needs of individuals with disabilities.

[(3) Persons operating programs for persons with disabilities under a grant or contract under paragraph (1) must coordinate their efforts with and disseminate information about their activities to the clearinghouse on postsecondary programs established under section 633(b).

[(4) At least one year before the termination of a grant or contract with any of the 4 regional centers for the deaf, the Secretary shall publish in the Federal Register a notice of intent to accept applications for such grant or contract, contingent on the appropriation of sufficient funds by Congress.

[(5) To the extent feasible, programs authorized by paragraph (1) shall be geographically dispersed throughout the Nation in urban and rural areas.

[(6) Of the sums made available for programs under paragraph (1), not less than $4,000,000 shall first be available for the 4 regional centers for the deaf. The Secretary shall continue to provide assistance through September 30, 1994, to the current grantees operating the four regional centers for the deaf under subsection (a) of this section. The Secretary shall continue to provide such assistance through September 30, 1995, unless the authorization of appropriations for parts C–G of the Act is extended by September 30, 1994.

[(b) For purposes of subsection (a), the term "individuals with disabilities" means individuals—

[(1) with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

[(2) who, by reason thereof, need special education and related services.

[SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR YOUTH WITH DISABILITIES

[SEC. 626. (a) The Secretary may make grants to, or enter into contracts with, institutions of higher education, State educational agencies, local educational agencies, or other appropriate public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act) to—

[(1) strengthen and coordinate special education and related services for youth with disabilities currently in school or who recently left school to assist them in the transition to postsecondary education, vocational training, competitive employment (including supported employment), continuing education, independent and community living, or adult services,

[(2) stimulate the improvement and development of programs for secondary special education, and

[(3) stimulate the improvement of the vocational and life skills of students with disabilities to enable them to be better prepared for transition to adult life and services.

To the extent feasible, such programs shall be geographically dispersed throughout the Nation in urban and rural areas.

[(b) Projects assisted under subsection (a) may include—

[(1) developing strategies and techniques for transition to independent living, vocational training, vocational rehabilitation, postsecondary education, and competitive employment (including supported employment) for youth with disabilities,

[(2) establishing demonstration models for services, programs, and individualized education programs, which emphasize vocational training, independent living, transitional services, and placement for youth with disabilities,

[(3) conducting demographic studies which provide information on the numbers, age levels, types of disabling conditions, and services required for youth with disabilities in need of transitional programs,

[(4) specially designed vocational programs to increase the potential for competitive employment for youth with disabilities,

[(5) research and development projects for exemplary service delivery models and the replication and dissemination of successful models,

[(6) initiating cooperative models among educational agencies and adult service agencies, including vocational rehabilitation, mental health, mental retardation, and public employment, and employers, which facilitate the planning and developing of transitional services for youth with disabilities to postsecondary education, vocational training, employment, continuing education, and adult services,

[(7) developing appropriate procedures for evaluating vocational training, placement, and transitional services for youth with disabilities, [(8) conducting studies which provide information on the numbers, age levels, types of disabling conditions and reasons why some youth with disabilities remain to complete school programs while others drop out,

[(9) developing curriculum and instructional techniques in special education and related services that will improve the acquisition of skills by students with disabilities necessary for transition to adult life and services,

[(10) specially designed or adapted physical education and therapeutic recreation programs to facilitate the full participation of youths with disabilities in community programs, and

[(11) developing and disseminating exemplary programs and practices that meet the unique needs of students who utilize assistive technology devices and assistive technology services as such students make the transition to postsecondary education, vocational training, competitive employment (including supported employment), and continuing education or adult services.

[(c) For purposes of paragraphs (1) and (2) of subsection (b), if an applicant is not an educational agency, such applicant shall coordinate its activities with the State educational agency.

[(d) Applications for assistance under subsection (a) other than for the purpose of conducting studies or evaluations shall—

[(1) describe the procedures to be used for disseminating relevant findings and data to regional resource centers, clearinghouses, and other interested persons, agencies, or organizations,

[(2) describe the procedures that will be used for coordinating services among agencies for which youth with disabilities are or will be eligible, and

[(3) provide for the direct participation of students with disabilities and the parents of students with disabilities in the planning, development, and implementation of such projects.

[(e)(1) The Secretary shall make one-time, 5-year grants, on a competitive basis, to States in which the State vocational rehabilitation agency and State educational agency submit a joint application to develop, implement, and improve systems to provide transition services for youth with disabilities from age 14 through the age they exit school.

[(2) In the case of a State whose vocational rehabilitation agency does not participate regarding a joint application described in paragraph (1), the Secretary may make a grant under such paragraph to the State if a joint application for the grant is submitted by the State educational agency and one other State agency that provides transition services to individuals who are leaving programs under this Act.

[(3) States that receive grants shall use grant funds to:

[(A) Increase the availability, access, and quality of transition assistance through the development and improvement of policies, procedures, systems, and other mechanisms for youth with disabilities and their families as such youth prepare for and enter adult life.

[(B) Improve the ability of professionals, parents, and advocates to work with such youth in ways that promote the understanding of and the capability to successfully make the transition from "student" to "adult".

[(C) Improve working relationships among education personnel, bothwithin LEAs and in postsecondary training programs, relevant State agencies, the private sector (especially employers), rehabilitation personnel, local and State employment agencies, local Private Industry Councils (PICS) authorized by the Job Training Partnership Act (JTPA), and families of students with disabilities and their advocates to identify and achieve consensus on the general nature and specific application of transition services to meet the needs of youth with disabilities.

[(D) Create an incentive for accessing and using the expertise and resources of programs, projects, and activities related to transition funded through this section and with other sources.

[(4)(A) In order to receive funding under this subsection, a State vocational rehabilitation agency and State educational agency shall describe in their application how they will use the first year, if necessary, to plan how to implement transition services, the second through fourth years to develop and implement transition services, and the fifth year to evaluate transition services. The application shall describe how the grant funds will be used during the planning period and phased out during the evaluation period to ensure the continuation of transition services. Such applications shall also include—

[(i) a description of the current availability, access, and quality of transition services for eligible youth and a description of how, over 5 years, the State will improve and expand the availability, access, and quality of transition services for youth with disabilities and their families as such youth prepare for and enter adult life;

[(ii) a description of how the State will improve and increase the ability of professionals, parents, and advocates to work with such youth in ways that promote the understanding of and the capability to successfully make the transition from "student" to "adult";

[(iii) a description of how the State will improve and increase working relationships among education personnel, both within LEAs and in postsecondary training programs, relevant State agencies, the private sector (especially employers), rehabilitation personnel, local and State employment agencies, local Private Industry Councils (PICS) authorized by the JTPA, and families of students with disabilities and their advocates to identify and achieve consensus on the general nature and specific application of transition services to meet the needs of youth with disabilities; and

[(iv) a description of how the State will use grant funds as an incentive for accessing and using the expertise and resources of programs, projects, and activities related to transition funded through this section and with other sources.

[(B) The Secretary shall give preference to those applications that, in addition to clearly addressing the requirements under subparagraph (A), describe how the State will—

[(i) target resources to school settings, such as providing access to rehabilitation counselors for students with disabilities who are in school settings;

[(ii) target a substantial amount of grant funds, received under this subsection, to case management, program evaluation and documentation of, and dissemination of information about, transition services;

[(iii) provide incentives for interagency and private sector resource pooling and otherwise investing in transition services, especially in the form of cooperative agreements, particularly with PICS authorized by the JTPA and local branches of State employment agencies;

[(iv) provide for early, ongoing information and training for those involved with or who could be involved with transition services—professionals, parents, youth with disabilities, including self-advocacy training for such youth, and advocates for such youth as well as PICS authorized by the JTPA and local branches of State employment agencies;

[(v) provide for the early and direct involvement of all relevant parties, including PICS authorized by the JTPA and local branches of State employment agencies, in operating and planning improvements in transition services, and the early and direct involvement of all relevant parties in planning and implementing transition services for individual youth;

[(vi) provide access to training for eligible youth that matches labor market needs in their communities;

[(vii) integrate transition services with relevant opportunities in communities, including those sponsored by PICS authorized by the JTPA and local employment agencies;

[(viii) use a transition services evaluation plan that is outcome oriented and that focuses on individual youth-focused benefits; and

[(ix) ensure that, when appropriate and no later than age 22, eligible youth who participate in transition services under this program would be served as appropriate in the State section 110 and/or title VI, part C program authorized under the Rehabilitation Act of 1973.

[(f)(1) The Secretary is authorized to make grants to, or to enter into contracts or cooperative agreements with, such organizations or institutions as are determined by the Secretary to be appropriate for the development or demonstration of new or improvements in existing methods, approaches, or techniques which will contribute to the adjustment and education of children and youth with disabilities and the dissemination of materials and information concerning practices found effective in working with such children and youth. Such organizations and institutions shall disseminate such materials and information as prescribed under section 610(g).

[(2) The Secretary shall fund one or more demonstration models designed to establish appropriate methods of providing, or continuing to provide, assistive technology devices and services to secondary school students as they make the transition to vocational rehabilitation, employment, postsecondary education, or adult services. Such demonstration models shall include, as appropriate—

[(A) cooperative agreements with the Rehabilitation Services Administration and/or State vocational rehabilitation agencies that ensure continuity of funding for assistive technology devices and services to such students; and

[(B) methods for dissemination of exemplary practices that can be adapted or adopted by transitional programs for secondary school students with disabilities.

[(3)(A) The Secretary shall award one, five-year cooperative agreement through a separate competition to an institution of higher education, or nonprofit public or private organization. The purpose of this agreement will be to evaluate and document the approaches and outcomes of the projects funded under subsection (e). The results of this agreement shall be disseminated through the appropriate clearinghouses, networks, and through direct communication with Federal, State, and local agencies.

[(B) The evaluation carried out pursuant to subparagraph (A) of transition services under subsection (e) shall include an evaluation of—

[(i) the outcomes of the transition services provided under such subsection, including the effect of the services regarding postsecondary education, job training, employment, and other appropriate matters;

[(ii) the impact of including in the individualized education program a statement of needed transition services (as required under section 602(a)(20)(D));

[(iii) the extent to which, in the provision of the transition services, agencies are cooperating effectively, including evaluation of the extent of coordination of the staff of the agencies, of procedures regarding confidentiality, assessment of needs, and referrals, and coordination regarding data bases and training;

[(iv) the extent to which obstacles exist regarding cooperation and coordination among agencies in the provision of the transition services, and the extent to which Federal law creates disincentives to such cooperation and coordination; and

[(v) the extent to which the transition services have been provided in a cost-effective manner.

[(C) The evaluation carried out pursuant to subparagraph (A) shall include recommendations on the manner in which the program under subsection (e) can be improved.

[(D) In the annual report required under section 618(g), the Secretary shall include a report of the activities and results associated with the agreement under subparagraph (A).

[(g) The Secretary, as appropriate, shall coordinate programs described under subsection (a) with projects developed under section 311 of the Rehabilitation Act of 1973, the Job Training Partnership Act (JTPA), and the Carl D. Perkins Vocational and Applied Technology Education Act.

[PROGRAMS FOR CHILDREN AND YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE

[SEC. 627. (a) The Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with, institutions of higher education, State and local educational agencies, and other appropriate public and private nonprofit institutions or agencies to establish projects for the purpose of improving special education and related services to children and youth with serious emotional disturbance. Such projects may include—

[(1) studies regarding the present state of special education and related services to such children and youth and their families, including information and data to enable assessments of the status of such services over time;

[(2) developing methodologies and curricula designed to improve special education and related services for these children and youth;

[(3) developing and demonstrating strategies and approaches to reduce the use of out-of-community residential programs and the increased use of school district-based programs (which may include day treatment programs, after-school programs, and summer programs);

[(4) developing the knowledge, skills, and strategies for effective collaboration among special education, regular education, related services, and other professionals and agencies; or

[(5) developing and demonstrating innovative approaches to assist and to prevent children with emotional and behavioral problems from developing serious emotional disturbances that require the provision of special education and related services.

[(b)(1) The Secretary is authorized to make grants, on a competitive basis, to local educational agencies in collaboration with mental health entities to provide services for children and youth with serious emotional disturbance. Such demonstration projects shall—

[(A) increase the availability, access, and quality of community services for such children and youth and their families;

[(B) improve working relationships among education, school, and community mental health and other relevant personnel, families of such children and youth, and their advocates;

[(C) target resources to school settings, such as providing access to school and/or community mental health professionals and other community resources for students with serious emotional disturbance who are in community school settings; and

[(D) take into account the needs of minority children and youth in all phases of project activity.

[(2) Funds received under this subsection may also be used to facilitate interagency and private sector resource pooling to improve services for such children and youth and to provide information and training for those involved with, or who could be involved with, such children and youth.

[(c) Each project assisted under this section shall—

[(1) apply existing research outcomes from multi-disciplinary fields;

[(2) use a grant evaluation plan that is outcome-oriented and that focuses on the benefits to individual children and youth;

[(3) report on the effectiveness of such project; and

[(4) disseminate the findings of such project, where appropriate, in accordance with section 610(g).

[AUTHORIZATION OF APPROPRIATIONS

[Sec. 628. (a) There are authorized to be appropriated to carry out section 621 $8,525,000 for fiscal year 1991, $9,300,000 for fiscal year 1992, $10,140,000 for fiscal year 1993, and $11,052,000 for fiscal year 1994.

[(b) There are authorized to be appropriated to carry out section 622 $21,900,000 for fiscal year 1991, $24,100,000 for fiscal year 1992, $26,500,000 for fiscal year 1993, and $29,200,000 for fiscal year 1994.

[(c) There are authorized to be appropriated to carry out section 623 $31,400,000 for fiscal year 1991, $34,235,000 for fiscal year 1992, $37,325,000 for fiscal year 1993, and $40,705,000 for fiscal year 1994.

[(d) There are authorized to be appropriated to carry out section 624 $9,500,000 for fiscal year 1991, $10,500,000 for fiscal year 1992, $11,600,000 for fiscal year 1993, and $12,700,000 for fiscal year 1994.

[(e) There are authorized to be appropriated to carry out section 625 $9,470,000 for fiscal year 1991, $10,230,000 for fiscal year 1992, $11,050,000 for fiscal year 1993, and $11,930,000 for fiscal year 1994.

[(f) There are authorized to be appropriated to carry out section 626 (except subsection (e)) $9,800,000 for fiscal year 1991, $10,800,000 for fiscal year 1992, $11,900,000 for fiscal year 1993, and $13,050,000 for fiscal year 1994.

[(g) There are authorized to be appropriated to carry out section 626(e) $27,500,000 for fiscal year 1991, $30,250,000 for fiscal year 1992, $33,275,000 for fiscal year 1993, and $36,602,000 for fiscal year 1994.

[(h) There are authorized to be appropriated to carry out section 627 $6,500,000 for fiscal year 1991, $8,000,000 for fiscal year 1992, $9,500,000 for fiscal year 1993, and $11,500,000 for fiscal year 1994.

[Part D—Training Personnel for the Education of Individuals With Disabilities

[GRANTS FOR PERSONNEL TRAINING

[Sec. 631. (a)(1) The Secretary may make grants, which may include scholarships with necessary stipends and allowances, to institutions of higher education (including university affiliated programs and satellite centers participating in programs under part D of the Developmental Disabilities Assistance and Bill of Rights Act) and other appropriate nonprofit agencies to assist them in training personnel for careers in special education, related services, and early intervention, including—

[(A) special education teaching, including speech-language pathology and audiology, and adapted physical education and instructional and assistive technology services,

[(B) related services to children and youth with disabilities in educational settings, and other settings, [(C) special education and other careers in preschool and early intervention services for infants and toddlers with disabilities,

[(D) special education leadership, including supervision and administration (at the advanced graduate, doctoral, and post-doctoral levels), special education research, and special education personnel preparation (at the doctoral and post-doctoral levels),

[(E) training of special education personnel and other personnel providing special services and pre-school and early intervention services for children with disabilities, and

[(F) training in the use, applications, and benefits of assistive technology devices and assistive technology services (as defined in paragraphs (2) and (3) of section 3 of the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (29 U.S.C. 2202 (2) and (3))).

[(2)(A) The Secretary shall base the award of grants under paragraph (1) on information relating to the present and projected need for special education, related services, early intervention, and other personnel to be trained based on identified State, regional, or national shortages, including the need for personnel in the provision of special education to children of limited English proficiency, and the capacity of the institution or agency to train qualified personnel, and other information considered appropriate by the Secretary.

[(B) The Secretary shall ensure that grants are only made under paragraph (1) to applicant agencies and institutions that meet State and professionally recognized standards for the preparation of special education and related services personnel unless the grant is for the purpose of assisting the applicant agency or institution to meet such standards, and that include in their applications a detailed description of strategies that will be utilized to recruit and train members of minority groups and persons with disabilities.

[(3) Grants under paragraph (1) may be used by institutions to assist in covering the cost of courses of training or study for such personnel and for establishing and maintaining fellowships or traineeships with such stipends and allowances as may be determined by the Secretary. Such institutions shall give priority consideration in the selection of qualified recipients of fellowships and traineeships to individuals from disadvantaged backgrounds, including minorities and individuals with disabilities who are underrepresented in the teaching profession or in the specializations in which they are being trained.

[(4) The Secretary in carrying out paragraph (1) may reserve a sum not to exceed 5 percent of the amount available for paragraph (1) in each fiscal year for contracts to prepare personnel in areas where shortages exist when a response to that need has not been adequately addressed by the grant process.

[(5) In making grants under subsection (a)(1), the Secretary may determine that a portion of training supported through such grants shall be conducted on an interdisciplinary basis, and shall be designed to assist special educators in properly coordinating service provision with related services personnel. To the extent feasible, training programs funded under subsection (a)(1)(B) and (a)(1)(E) shall require practica to demonstrate the delivery of related services in an array of regular and special education and community settings.

[(6) Nothing in this subsection shall be construed to prevent regular education or special education personnel from benefiting or participating in training activities conducted under this subsection on a preservice or inservice basis.

[(7) The Secretary, in carrying out paragraph (1), shall make grants to Historically Black Colleges and Universities, and other institutions of higher education whose minority student enrollment is at least 25 percent.

[(8)(A) In making grants under paragraph (1), the Secretary may make grants through a separate competition to institutions of higher education, in partnership with local educational agencies and center schools for students who are deaf, to carry out not less than 4 regional model demonstration training programs on deafness and secondary disabilities.

[(B) Such programs shall provide preservice and inservice training to teachers and school administrators, and leadership personnel, in the education of students who are deaf and to related services personnel.

[(9) In making grants under paragraph (1), the Secretary may provide for the training or retraining of regular education teachers who are involved in providing instruction to individuals who are deaf, but who are not certified as teachers of such individuals, to meet the communications needs of such individuals.

[(b)(1) The Secretary may make grants to institutions of higher education, and other appropriate nonprofit agencies or organizations for the establishment or continuation of educational interpreter training programs to train personnel to effectively meet the various communication needs of elementary and secondary students who are deaf or deaf-blind. To the extent feasible, grants shall be geographically dispersed throughout the Nation in urban and rural areas.

[(2) The Secretary may make a grant under paragraph (1) only if the applicant for the grant provides an assurance that all interpreters receiving training under the grant will be provided training designed to develop skills necessary for facilitating effective communication for students who are deaf or deaf-blind.

[(3) In making grants under paragraph (1), the Secretary may provide for the training or retraining (including short-term and inservice training) of regular education teachers who are involved in providing instruction to individuals who are deaf, but who are not certified as teachers of such individuals, and other personnel who work with such individuals, on the role of educational interpreters.

[(c) The Secretary may make grants to institutions of higher education, State agencies, and other appropriate nonprofit agencies and organizations to develop and demonstrate effective ways for preservice training programs to prepare regular educators to work with children and youth with disabilities and their families; for training teachers to work in community and school settings with school students with disabilities and their families; for inservice and preservice training of personnel to work with infants, toddlers, children, and youth with disabilities and their families; for inservice and preservice training of personnel to work with minority infants, toddlers, children, and youth with disabilities and their families; for preservice and inservice training of special education and related services personnel in the use of assistive and instructional technology to benefit infants, toddlers, children, and youth with disabilities; and for the recruitment and retention of special education, related services, and early intervention personnel. Both preservice and inservice training shall include a component that addresses the coordination among all service providers, including regular educators.

[(d)(1) The Secretary shall fund up to 5 grants to States or entities to support the formation of consortia or partnerships of public and private entities for the purpose of providing opportunities for career advancement and/or competency-based training, including but not limited to, certificate or degree granting programs in special education, related services, and early intervention for current workers at public and private agencies that provide services to infants, toddlers, children, and youth with disabilities. Recipients shall meet the requirements of section 610(g) for the dissemination of information. The purposes for which such a grant may be expended include, but are not limited to, the following:

[(A) Establishing a program with colleges and universities to develop creative new programs and coursework options and/or to expand existing programs in the field of special education, related services, or early intervention. Funds may be used to provide release time for faculty and staff for curriculum development, instructional costs, and modest start-up and other program development costs.

[(B) Establishing a career development mentoring program using faculty and professional staff members of participating agencies as role models, career sponsors, and academic advisors for experienced State, city, county, and voluntary sector workers who have demonstrated a commitment to working in the above fields and who are enrolled in higher education institution programs relating to these fields.

[(C) Supporting a wide range of programmatic and research activities aimed at increasing opportunities for career advancement and competency-based training in the above fields.

[(D) Identifying existing public and private agency and labor union personnel policies and benefit programs that may facilitate the ability of workers to take advantage of higher education opportunities such as leave time, tuition reimbursement, etc.

[(2) To the extent feasible, projects authorized under paragraph (1) shall be geographically dispersed throughout the Nation in urban and rural areas.

[(3) The Secretary shall award, for the purpose of providing technical assistance to States or entities receiving grants under paragraph (1), a cooperative agreement through a separate competition to an entity that has successfully demonstrated the capacity and expertise in the education, training, and retention of workers to serve children and youth with disabilities through the use of consortia or partnerships established for the purpose of retaining the existing workforce and providing opportunities for career enhancement.

[(4) The Secretary may conduct an evaluation of projects funded under this subsection.

[(5) During the period in which an entity is receiving financial assistance under paragraph (1) or (3), the entity may not receive financial assistance under the other paragraph.

[(e)(1) The Secretary may make grants through a separate competition to private nonprofit organizations for the purpose of providing training and information to parents of infants, toddlers, children, and youth with disabilities and persons who work with parents to enable such individuals to participate more effectively with professionals in meeting the educational needs of children with disabilities. Such grants shall be designed to meet the unique training and information needs of parents of infants, toddlers, children, and youth with disabilities living in the area to be served by the grant, particularly those who are members of groups that have been traditionally underrepresented.

[(2) In order to receive a grant under paragraph (1) a private nonprofit organization shall—

[(A) be governed by a board of directors of which a majority of the members are parents of infants, toddlers, children, and youth with disabilities, particularly minority parents, and that includes members who are professionals, especially minority professionals, in the field of special education, early intervention, and related services, and individuals with disabilities, or, if the nonprofit private organization does not have such a board, such organization shall have a membership that represents the interests of individuals with disabilities, and shall establish a special governing committee of which a majority of the members are parents of infants, toddlers, children, and youth with disabilities, particularly parents of minority children, and which includes members who are professionals, especially minority professionals, in the field of special education, early intervention, and related services, to operate the training and information program under paragraph (1), and parent and professional membership of these boards or special governing committees shall be broadly representative of minority and other individuals and groups having an interest in special education, early intervention, and related services;

[(B) serve the parents of infants, toddlers, children, and youth with the full range of disabling conditions under such grant program; and

[(C) demonstrate the capacity and expertise to conduct effectively the training and information activities for which a grant may be made under paragraph (1), and, for purposes of paragraph (1), network with clearinghouses, including those established under section 633 and other organizations and agencies, and network with other established national, State, and local parent groups representing the full range of parents of infants, toddlers, children, and youth with disabilities, especially parents of minority children.

Nothing in subparagraph (A) shall be construed to authorize or permit the denial to any person of the due process of law required by the United States Constitution.

[(3) The board of directors or special governing committee of a private nonprofit organization receiving a grant under paragraph (1) shall meet at least once in each calendar quarter to review the parent training and information activities for which the grant is made, and each such committee shall advise the governing board directly of its views and recommendations. Whenever a private nonprofit organization requests the renewal of a grant under paragraph (1) for a fiscal year, the board of directors or the special governing committee shall submit to the Secretary a written review of the parent training and information program conducted by that private nonprofit organization during the preceding fiscal year.

[(4) The Secretary shall ensure that grants under paragraph (1) will—

[(A) be distributed geographically to the greatest extent possible throughout all the States and give priority to grants which involve unserved areas,

[(B) be targeted to parents of children with disabilities in both urban and rural areas or on a State or regional basis,

[(C) serve parents of minority children with disabilities (including parents served pursuant to paragraph (10)) representative to the proportion of the minority population in the areas being served by requiring that applicants for the grants identify with specificity the special efforts that will be undertaken to involve such parents, including efforts to work with community-based and cultural organizations and the specification of supplementary aids, services, and supports that will be made available, and by specifying budgetary items earmarked to accomplish this subparagraph, and

[(D) be funded at a sufficient size, scope, and quality to ensure that the program is adequate to serve the parents in the area.

[(5) Parent training and information programs assisted under paragraph (1) shall assist parents to—

[(A) better understand the nature and needs of the disabling conditions of children,

[(B) provide followup support for educational programs of children with disabilities,

[(C) communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals,

[(D) participate in educational decisionmaking processes, including the development of the individualized education program for a child with a disability,

[(E) obtain appropriate information about the range of options, programs, services, and resources available at the national, State, and local levels to assist infants, toddlers, children, and youth with disabilities and their families, and

[(F) understand the provisions for the education of infants, toddlers, children, and youth with disabilities under this Act.

[(6) Parent training and information programs may, at a grant recipient's discretion, include State or local educational personnel where such participation will further an objective of the program assisted by the grant.

[(7) Each private nonprofit organization operating a program receiving a grant under paragraph (1) shall consult and network with appropriate national, State, regional, and local agencies and organizations, such as protection and advocacy agencies, that serve or assist infants, toddlers, children, and youth with disabilities and their families and are located in the jurisdictions served by the program.

[(8) The Secretary shall provide technical assistance, by grant or contract, for establishing, developing, and coordinating parent training and information programs.

[(9) After the establishment in each State of a parent training and information center, the Secretary shall provide for the establishment of 3 experimental centers to serve large numbers of parents of children with disabilities located in high density areas that do not have such centers and 2 such centers to serve large numbers of parents of children with disabilities located in rural areas.

[(10)(A) In the case of a grant under paragraph (1) to a private nonprofit organization for fiscal year 1993 or 1994, the organization, in expending the amounts described in subparagraph (B), shall give priority to providing services under this subsection to parents of children with disabilities aged 0–5.

[(B) With respect to a grant under paragraph (1) to a private nonprofit organization for fiscal year 1993 or 1994, the amounts described in this subparagraph are any amounts provided in the grant in excess of the amount of any grant under such paragraph provided to the organization for fiscal year 1992.

[(11) Effective for fiscal year 1991 and every year thereafter, the Secretary shall obtain data concerning programs and centers assisted under this subsection on—

[(A) the number of parents provided information and training by disability category of their children,

[(B) the types and modes of information or training provided,

[(C) strategies used to reach and serve parents of minority infants, toddlers, children, and youth with disabilities,

[(D) the number of parents served as a result of activities described under subparagraph (C),

[(E) activities to network with other information clearinghouses and parent groups as required in subsection (c)(2)(C),

[(F) the number of agencies and organizations consulted with at the national, State, regional, and local levels, and

[(G) the number of parents served under this subsection who are parents of children with disabilities aged 0–5.

The Secretary shall include a summary of this information in the annual report to Congress as required in section 618(g).

[GRANTS TO STATE EDUCATIONAL AGENCIES AND INSTITUTIONS FOR TRAINEESHIPS

[SEC. 632. (a) The Secretary shall make a grant of sufficient size and scope to each State educational agency for the purposes described in subsection (c) and, in any State in which the State educational agency does not apply for such a grant, to an institution of higher education within such State for such purposes.

[(b) The Secretary may also make a limited number of grants to State educational agencies on a competitive basis for the purposes described in subsection (c). In any fiscal year, the Secretary may not expend for purposes of this subsection an amount that exceeds 10 percent of the amount expended for purposes of this section in the preceding fiscal year.

[(c) Grants made under this section shall be for the purpose of assisting States in establishing and maintaining preservice and inservice programs to prepare special and regular education, related services and early intervention personnel to meet the needs of infants, toddlers, children, and youth with disabilities or supervisors of such persons, consistent with the personnel needs identified in the State's comprehensive system of personnel development under section 613 and under section 676(b)(8), and to assist the State in developing and maintaining such systems and conducting personnel recruitment and retention activities.

[(d) The Secretary is authorized to provide directly or by grant, contract, or cooperative agreement, technical assistance to State educational agencies on matters pertaining to the effective implementation of section 613(a)(3).

[CLEARINGHOUSES

[SEC. 633. (a) The Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with, public agencies or private nonprofit organizations or institutions for the establishment of three national clearinghouses: on children and youth with disabilities; on postsecondary education for individuals with disabilities; and on careers in special education, to—

[(1) collect, develop, and disseminate information,

[(2) provide technical assistance,

[(3) conduct coordinated outreach activities,

[(4) provide for the coordination and networking with other relevant national, State, and local organizations and information and referral resources,

[(5) respond to individuals and organizations seeking information, and

[(6) provide for the synthesis of information for its effective utilization by parents, professionals, individuals with disabilities, and other interested parties.

[(b) The national clearinghouse for children and youth with disabilities shall:

[(1) Collect and disseminate information (including the development of materials) on characteristics of infants, toddlers, children, and youth with disabilities and on programs, legislation, and services relating to their education under this Act and other Federal laws.

[(2) Participate in programs and services related to disability issues for providing outreach, technical assistance, collection, and dissemination of information; and promoting networking of individuals with appropriate national, State, and local agencies and organizations.

[(3) Establish a coordinated network and conduct outreach activities with relevant Federal, State, and local organizations and other sources for promoting public awareness of disability issues and the availability of information, programs, and services.

[(4) Collect, disseminate, and develop information on current and future national, Federal, regional, and State needs for providing information to parents, professionals, individuals with disabilities, and other interested parties relating to the education and related services of individuals with disabilities.

[(5) Provide technical assistance to national, Federal, regional, State and local agencies and organizations seeking to establish information and referral services for individuals with disabilities and their families.

[(6) In carrying out the activities in this subsection, the clearinghouse will include strategies to disseminate information to underrepresented groups such as those with limited English proficiency.

[(c) The national clearinghouse on postsecondary education for individuals with disabilities shall:

[(1) Collect and disseminate information nationally on characteristics of individuals entering and participating in education and training programs after high school; legislation affecting such individuals and such programs; policies, procedures, and support services, as well as adaptations, and other resources available or recommended to facilitate the education of individuals with disabilities; available programs and services that include, or can be adapted to include, individuals with disabilities; and sources of financial aid for the education and training of individuals with disabilities.

[(2) Identify areas of need for additional information.

[(3) Develop new materials (in both print and nonprint form), especially by synthesizing information from a variety of fields affecting disability issues and the education, rehabilitation, and retraining of individuals with disabilities.

[(4) Develop a coordinated network of professionals, related organizations and associations, mass media, other clearinghouses, and governmental agencies at the Federal, regional, State, and local level for the purposes of disseminating information and promoting awareness of issues relevant to the education of individuals with disabilities after high school and referring individuals who request information to local resources.

[(5) Respond to requests from individuals with disabilities, their parents, and professionals who work with them, for information that will enable them to make appropriate decisions about postsecondary education and training.

[(d) The national clearinghouse designed to encourage students to seek careers and professional personnel to seek employment in the various fields relating to the education of children and youth with disabilities shall:

[(1) Collect and disseminate information on current and future national, regional, and State needs for special education and related services personnel.

[(2) Disseminate information to high school counselors and others concerning current career opportunities in special education, location of programs, and various forms of financial assistance (such as scholarships, stipends, and allowances).

[(3) Identify training programs available around the country.

[(4) Establish a network among local and State educational agencies and institutions of higher education concerning the supply of graduates and available openings.

[(5) Provide technical assistance to institutions seeking to meet State and professionally recognized standards.

[(e)(1) In awarding grants, contracts, and cooperative agreements under this section, the Secretary shall give priority consideration to any applicant with demonstrated, proven effectiveness (at the national level) in performing the functions established in this section; and with the ability to conduct such projects, communicate with intended consumers of information, and maintain the necessary communication with national, regional, State, and local agencies and organizations.

[(2) In awarding grants, contracts, and cooperative agreements under this section, the Secretary shall give priority consideration to any applicant with demonstrated, proven effectiveness (at the national level) in providing informational services to minorities and minority organizations.

[(f)(1) Beginning in fiscal year 1991, and for each year thereafter, the Secretary shall obtain information on each project assisted under this section, including—

[(A) the number of individuals served by disability category, as appropriate, including parents, professionals, students, and individuals with disabilities;

[(B) a description of responses utilized;

[(C) a listing of new products developed and disseminated; and

[(D) a description of strategies and activities utilized for outreach to urban and rural areas with populations of minorities and underrepresented groups.

[(2) A summary of the data required by this subsection shall be included in the annual report to Congress required under section 618.

[REPORTS TO THE SECRETARY

[Sec. 634. (a) Not more than sixty days after the end of any fiscal year, each recipient of a grant or contract under this part during such fiscal year shall prepare and submit a report to the Secretary. Each such report shall be in such form and detail as the Secretary determines to be appropriate, and shall include—

[(1) the number of individuals trained under the grant or contract, by category of training and level of training;

[(2) the number of individuals trained under the grant or contract receiving degrees and certification, by category and level of training; and

[(3) information described in section 631(d)(11) and section 633(f)(1), as applicable.

[(b) A summary of the data required by this section shall be included in the annual report of the Secretary under section 618 of this Act.

[AUTHORIZATION OF APPROPRIATIONS

[Sec. 635. (a)(1) There are authorized to be appropriated to carry out this part (other than sections 631(a)(7), 631(d), and 633) $94,725,000 for fiscal year 1991, $103,255,000 for fiscal year 1992, $113,580,000 for fiscal year 1993, and $123,760,000 for fiscal year 1994.

[(2) There are authorized to be appropriated to carry out section 631(a)(7) $19,250,000 for fiscal year 1991, $21,175,000 for fiscal year 1992, $23,292,500 for fiscal year 1993, and $25,621,750 for fiscal year 1994.

[(3) There are authorized to be appropriated to carry out section 631(d) $11,000,000 for fiscal year 1991, $15,100,000 for fiscal year 1992, $16,300,000 for fiscal year 1993, and $17,600,000 for fiscal year 1994.

[(4) There are authorized to be appropriated to carry out section 633 $2,900,000 for fiscal year 1991, $2,465,000 for fiscal year 1992, $2,710,000 for fiscal year 1993, and $2,960,000 for fiscal year 1994.

[(b) Of the funds appropriated pursuant to subsection (a) for any fiscal year, the Secretary shall reserve not less than 65 per centum for activities described in subparagraphs (A) through (E) of section 631(a)(1).

[PART E—RESEARCH IN THE EDUCATION OF HANDICAPPED INDIVIDUALS

[RESEARCH AND RELATED ACTIVITIES

[Sec. 641. (a) The Secretary may make grants to, or enter into contracts or cooperative agreements with, State and local educational agencies, institutions of higher education, other public agencies and nonprofit private organizations for the purpose of advancing and improving the knowledge base and improving the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals who work with children and youth with disabilities in regular education environments, to provide such children effective instruction and enable them to successfully learn. The activities supported under this section shall support innovation, development, exchange, and use of such advancements in knowledge and practice designed to contribute to the improvement of instruction and learning of infants, toddlers, children, and youth with disabilities. In carrying out this section, the Secretary may support a wide range of research and related activities designed to—

[(1) advance knowledge regarding the provision of instruction and other interventions to infants, toddlers, children, and youth with disabilities including—

[(A) the organization, synthesis, and interpretation of current knowledge and the identification of knowledge gaps;

[(B) the identification of knowledge and skill competencies needed by personnel providing special education, related services, and early intervention services;

[(C) the improvement of knowledge regarding the developmental and learning characteristics of infants, toddlers, children, and youth with disabilities in order to improve the design and effectiveness of interventions and instruction;

[(D) the evaluation of approaches and interventions;

[(E) the development of instructional strategies, techniques, and activities;

[(F) the improvement of curricula and instructional tools such as textbooks, media, materials, and technology;

[(G) the development of assessment techniques, instruments (including tests, inventories, and scales), and strategies for measurement of progress and the identification, location, and evaluation of infants, toddlers, children, and youth with disabilities for the purpose of determining eligibility, program planning, and placement for special education, related services, and early intervention services. Particular attention should be given to the development of alternative assessment procedures and processes for minority individuals and those with limited English proficiency;

[(H) the testing of research findings in practice settings to determine the application, usability, effectiveness, and generalizability of such research findings;

[(I) the improvement of knowledge regarding families, minorities, limited English proficiency, and disabling conditions; and

[(J) the identification of environmental, organizational, resource, and other conditions necessary for effective professional practice; and

[(2) advance the use of knowledge by personnel providing special education, related services, and early intervention services including—

[(A) the improvement of knowledge regarding how such individuals learn new knowledge and skills, and strategies for effectively facilitating such learning in preservice, inservice, and continuing education;

[(B) the organization, integration, and presentation of knowledge so that such knowledge can be incorporated and imparted in personnel preparation, continuing education programs, and other relevant training and communication vehicles; and

[(C) the expansion and improvement of networks that exchange knowledge and practice information.

[(b) In carrying out subsection (a), the Secretary shall consider the special education, related services, or early intervention and research experience of applicants.

[(c) The Secretary shall publish proposed priorities under this part in the Federal Register not later than 12 months preceding the fiscal year for which they are being announced, and shall allow a period of 60 days for public comments and suggestions. The Secretary shall, after analyzing and considering the public comments, publish final priorities in the Federal Register not later than 90 days after the close of the comment period.

[(d) The Secretary shall provide an index (including the title of each project and the name and address of the funded organization) of all projects conducted under this part in the prior fiscal year in the annual report described under section 618.

[(e) The Secretary shall—

[(1) coordinate the priorities established under subsection (b) with research priorities established by the National Institute for Disability and Rehabilitation Research and other appropriate agencies conducting research pertaining to the education of individuals with disabilities; and

[(2) provide information concerning priorities established under subsection (b) to the National Council on Disability and to the Bureau of Indian Affairs Advisory Committee for Exceptional Children.

[(f)(1) The Secretary shall make grants or enter into contracts or cooperative agreements for the establishment of a center or centers designed to organize, synthesize, and disseminate current knowledge relating to children with attention deficit disorder with respect to the following:

[(A) Assessment techniques, instruments, and strategies used for identification, location, evaluation and for measurement of progress.

[(B) Knowledge and skill competencies needed by professionals providing special and regular education and related services.

[(C) Environmental, organizational, resource, and other conditions necessary for effective professional practice.

[(D) Developmental and learning characteristics.

[(E) Instructional strategies, techniques, and activities.

[(F) Curricula and instructional tools such as textbooks, media, materials, and technology.

[(G) Strategies, techniques, and activities related to involvement of families.

[(2) In awarding grants, contracts, and cooperative agreements under paragraph (1), the Secretary shall give priority consideration to applicants with—

[(A) demonstrated knowledge concerning the disorder;

[(B) proven effectiveness in performing the functions established in this subsection; and

[(C) the ability to—

[(i) conduct such projects;

[(ii) communicate with intended consumers of information; and

[(iii) maintain the necessary communication with national, regional, State, and local agencies.

[(g)(1) The Secretary shall make grants, or enter into contracts or cooperative agreements, for the establishment of model demonstration programs, of which some will be school-based models, that provide the services of an ombudsman to assist in resolving problems that are barriers to appropriate educational, related services, or other services for children and youth with disabilities.

[(2) Programs under paragraph (1) shall provide or identify personnel to assist children and youth with disabilities, their parents or guardians, special and regular education teachers, State and local education administrators, and related services personnel to resolve problems in a timely manner through dispute mediation and other methods, notwithstanding due process procedures, in order to further the delivery of appropriate education and related services. Participation in this program does not preclude or delay due process under part B of this Act.

[(3) Ombudsman services for programs under paragraph (1) shall be provided by social workers, parent advocates, psychologists, and persons with similar qualifications designated by the Secretary.

[(h)(1) The Secretary may make grants to institutions of higher education, in partnership with other appropriate agencies and organizations such as local educational agencies and center schools for students who are deaf, to—

[(A) conduct research in the unique needs of children and youth, including minority children and youth, with disabilities;

[(B) develop and evaluate specialized instructional methods, materials, curricula, and technologies for use with such children and youth; and

[(C) develop and evaluate assessment techniques, instruments, and strategies used to identify, evaluate, and measure the progress of such children and youth.

[(2) Each grantee under this subsection shall provide for the meaningful involvement in its project of parents and family members and adult role models.

[RESEARCH AND DEMONSTRATION PROJECTS IN PHYSICAL EDUCATION AND RECREATION FOR CHILDREN WITH DISABILITIES

[SEC. 642. The Secretary is authorized to make grants to States, State or local educational agencies, institutions of higher education, and other public or nonprofit private educational or research agencies and organizations, and to make contracts with States, State or local educational agencies, institutions of higher education, and other public or private educational or research agencies and organizations, for research and related purposes relating to physical education or recreation for children with disabilities, including therapeutic recreation, and to conduct research, surveys, or demonstrations relating to physical education or recreation for children with disabilities, including therapeutic recreation.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 643. For purposes of carrying out this part, there are authorized to be appropriated $21,100,000 for fiscal year 1990, $24,650,000 for fiscal year 1991, $27,400,000 for fiscal year 1992, $30,200,000 for fiscal year 1993, and $33,200,000 for fiscal year 1994.

[PART F—INSTRUCTIONAL MEDIA FOR INDIVIDUALS WITH DISABILITIES

[PURPOSES

[SEC. 651. The purposes of this part are to promote—

[(1) the general welfare of deaf and hard of hearing individuals by—

[(A) bringing to such individuals understanding and appreciation of those films and television programs that play such an important part in the general and cultural advancement of hearing individuals;

[(B) providing through these films and television programs enriched educational and cultural experiences through which deaf and hard of hearing individuals can be brought into better touch with the realities of their environment; and

[(C) providing a wholesome and rewarding experience that deaf and hard of hearing individuals may share together; and

[(2) the educational advancement of individuals with disabilities by—

[(A) carrying on research in the use of educational media for individuals with disabilities;

[(B) producing and distributing educational media for the use of individuals with disabilities, their parents, their actual or potential employers, and other individuals directly involved in work for the advancement of individuals with disabilities;

[(C) training individuals in the use of educational media for the instruction of individuals with disabilities; and

[(D) utilizing educational media to help eliminate illiteracy among individuals with disabilities;

[(3) the general welfare of visually impaired individuals by—

[(A) bringing to such individuals an understanding and appreciation of textbooks, films, television programs, video material, and other educational publications and materials that play such an important part in the general and cultural advancement of visually unimpaired individuals; and

[(B) ensuring access to television programming and other video materials.

[CAPTIONED FILMS, TELEVISION, DESCRIPTIVE VIDEO, AND EDUCATIONAL MEDIA FOR HANDICAPPED INDIVIDUALS

[SEC. 652. (a) The Secretary shall establish a loan service of captioned films, descriptive video and educational media for the purpose of making such materials available, in accordance with regulations, in the United States for nonprofit purposes to individuals with disabilities, parents of individuals with disabilities, and other individuals directly involved in activities for the advancement of individuals with disabilities, including for the purpose of addressing problems of illiteracy among individuals with disabilities.

[(b) The Secretary is authorized to—

[(1) acquire films (or rights thereto) and other educational media by purchase, lease, or gift;

[(2) acquire by lease or purchase equipment necessary for the administration of this part;

[(3) provide, by grant or contract, for the captioning for deaf and hard of hearing individuals and video description for the visually impaired, of films, television programs, and video materials;

[(4) provide, by grant or contract, for the distribution of captioned and video-described films, video materials, and other educational media and equipment through State schools for handicapped individuals, public libraries, and such other agencies or entities as the Secretary may deem appropriate to serve as local or regional centers for such distribution;

[(5) provide, by grant or contract, for the conduct of research in the use of educational and training films and other educational media for individuals with disabilities, for the production and distribution of educational and training films and other educational media for individuals with disabilities and the training of individuals in the use of such films and media, including the payment to those individuals of such stipends (including allowances for travel and other expenses of such individuals and their dependents) as the Secretary may determine, which shall be consistent with prevailing practices under comparable federally supported programs;

[(6) utilize the facilities and services of other governmental agencies;

[(7) accept gifts, contributions, and voluntary and uncompensated services of individuals and organizations; and

[(8) provide by grant or contract for educational media and materials for deaf and hard of hearing individuals.

[(c) The Secretary may make grants to or enter into contracts or cooperative agreements with the National Theatre of the Deaf, Inc. and other appropriate non-profit organizations for the purpose of providing cultural experiences to—

[(1) enrich the lives of deaf and hard of hearing children and adults,

[(2) increase public awareness and understanding of deafness and of the artistic and intellectual achievements of deaf and hard of hearing individuals, and

[(3) promote the integration of hearing and deaf and hard of hearing individuals through shared cultural, educational, and social experiences.

[(d)(1) The Secretary is authorized to make a grant or enter into a contract for the purpose of providing current, free textbooks and other educational publications and materials to blind and other print-handicapped students in elementary, secondary, postsecondary, and graduate schools and other institutions of higher education through the medium of transcribed tapes and cassettes.

[(2) For the purpose of this subsection, the term "print-handicapped" refers to any individual who is blind or severely visually impaired, or who, by reason of a physical or perceptual disability, is unable to read printed material unassisted.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 653. For the purpose of carrying out section 652 there are authorized to be appropriated $20,010,000 for fiscal year 1991, $22,010,000 for fiscal year 1992, $24,200,000 for fiscal year 1993, and $26,600,000 for fiscal year 1994.

[PART G—TECHNOLOGY, EDUCATIONAL MEDIA, AND MATERIALS FOR INDIVIDUALS WITH DISABILITIES

[FINANCIAL ASSISTANCE

[SEC. 661. (a) The Secretary may make grants or enter into contracts or cooperative agreements with institutions of higher education, State and local educational agencies, or other appropriate agencies and organizations for the purpose of advancing the use of new technology, media, and materials in the education of students with disabilities and the provision of related services and early intervention services to infants and toddlers with disabilities. In carrying out this section, the Secretary may fund projects or centers for the purposes of—

[(1) determining how technology, assistive technology, media, and materials are being used in the education of individuals with disabilities and how they can be used most effectively, efficiently, and appropriately,

[(2) designing and adapting technology, assistive technology, media, and materials to improve the education of students with disabilities,

[(3) assisting the public and private sectors in the development and marketing of technology, assistive technology, media, and materials for the education of individuals with disabilities,

[(4) disseminating information on the availability and use of technology, assistive technology, media, and materials for the education of individuals with disabilities, where appropriate, to entities described in section 610(g),

[(5) increasing access to and use of assistive technology devices and assistive technology services in the education of infants, toddlers, children, and youth with disabilities, and other activities authorized under the Technology-Related Assistance for Individuals With Disabilities Act of 1988, as such Act relates to the education of students with disabilities, and

[(6) examining how these purposes can address the problem of illiteracy among individuals with disabilities.

[(b)(1) With respect to new technology, media, and materials utilized with funds under this part to improve the education of students with disabilities, the Secretary shall make efforts to ensure that such instructional materials are closed captioned.

[(2) The Secretary may not award a grant, contract, or cooperative agreement under paragraphs (1) through (4) of subsection (a) unless the applicant for such assistance agrees that activities carried out with the assistance will be coordinated, as appropriate, with the State entity receiving funds under title I of the Technology-Related Assistance for Individuals with Disabilities Act of 1988.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 662. For the purpose of carrying out this part, there are authorized to be appropriated $11,900,000 for fiscal year 1991, $12,860,000 for fiscal year 1992, $13,890,000 for fiscal year 1993, and $15,000,000 for fiscal year 1994.

(20 U.S.C. 1462)

[Part H—Infants and Toddlers With Disabilities

[FINDINGS AND POLICY

SEC. 671. (a) FINDINGS.—The Congress finds that there is an urgent and substantial need—

[(1) to enhance the development of infants and toddlers with disabilities and to minimize their potential for developmental delay,

[(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age,

[(3) to minimize the likelihood of institutionalization of individuals with disabilities and maximize the potential for their independent living in society,

[(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities, and

[(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of historically underrepresented populations, particularly minority, low-income, inner-city, and rural populations.

[(b) POLICY.—It is therefore the policy of the United States to provide financial assistance to States—

[(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for infants and toddlers with disabilities and their families,

[(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage), and

[(3) to enhance their capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families.

[DEFINITIONS

[SEC. 672. As used in this part—

[(1) The term "infants and toddlers with disabilities" means individuals from birth to age 2, inclusive, who need early intervention services because they—

[(A) are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: cognitive development, physical development, language and speech development (hereafter in this part referred to as "communication development"), psychosocial development (hereafter in this part referred to as "social or emotional development"), or self-help skills (hereafter in this part referred to as "adaptive development"), or

[(B) have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay.

Such term may also include, at a State's discretion, individuals from birth to age 2, inclusive, who are at risk of having substantial developmental delays if early intervention services are not provided.

[(2) The term "early intervention services" are developmental services which—

[(A) are provided under public supervision,

[(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees,

[(C) are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas:

[(i) physical development,

[(ii) cognitive development,

[(iii) communication development,

[(iv) social or emotional development, or

[(v) adaptive development,

[(D) meet the standards of the State, including the requirements of this part,

[(E) include—

[(i) family training, counseling, and home visits,

[(ii) special instruction,

[(iii) speech pathology and audiology,

[(iv) occupational therapy,

[(v) physical therapy,

[(vi) psychological services,

[(vii) case management services (hereafter in this part referred to as "service coordination services"),

[(viii) medical services only for diagnostic or evaluation purposes,

[(ix) early identification, screening, and assessment services,

[(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services,

[(xi) social work services,

[(xii) vision services,

[(xiii) assistive technology devices and assistive technology services, and

[(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive early intervention services,

[(F) are provided by qualified personnel, including—

[(i) special educators,

[(ii) speech and language pathologists and audiologists,

[(iii) occupational therapists,

[(iv) physical therapists,

[(v) psychologists,

[(vi) social workers,

[(vii) nurses,

[(viii) nutritionists,

[(ix) family therapists,

[(x) orientation and mobility specialists, and [(xi) pediatricians and other physicians,

[(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate, and

[(H) are provided in conformity with an individualized family service plan adopted in accordance with section 677.

[(3) The term "developmental delay" has the meaning given such term by a State under section 676(b)(1).

[(4) The term "Council" means the State Interagency Coordinating Council established under section 682.

[GENERAL AUTHORITY

[SEC. 673. The Secretary shall, in accordance with this part, make grants to States (from their allocations under section 684) to assist each State to develop a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

[GENERAL ELIGIBILITY

[SEC. 674. In order to be eligible for a grant under section 673 for any fiscal year, a State shall demonstrate to the Secretary (in its application under section 678) that the State has established a State Interagency Coordinating Council which meets the requirements of section 682.

[CONTINUING ELIGIBILITY

[SEC. 675. (a) FIRST TWO YEARS.—In order to be eligible for a grant under section 673 for the first or second year of a State's participation under this part, a State shall include in its application under section 678 for that year an assurance that funds received under section 673 shall be used to assist the State to plan, develop, and implement the statewide system required by section 676.

[(b) THIRD AND FOURTH YEAR.—(1) In order to be eligible for a grant under section 673 for the third or fourth year of a State's participation under this part, a State shall include in its application under section 678 for that year information and assurances demonstrating to the satisfaction of the Secretary that—

[(A) the State has adopted a policy which incorporates all of the components of a statewide system in accordance with section 676 or obtained a waiver from the Secretary under paragraph (2),

[(B) funds shall be used to plan, develop, and implement the statewide system required by section 676, and

[(C) such statewide system will be in effect no later than the beginning of the fourth year of the State's participation under section 673, except that in order to comply with section 676(b)(4), a State need only conduct multidisciplinary assessments, develop individualized family service plans, and make available case management services.

[(2) Notwithstanding paragraph (1), the Secretary may permit a State to continue to receive assistance under section 673 during such third year even if the State has not adopted the policy required by paragraph (1)(A) before receiving assistance if the State demonstrates in its application—

[(A) that the State has made a good faith effort to adopt such a policy,

[(B) the reasons why it was unable to meet the timeline and the steps remaining before such a policy will be adopted, and

[(C) an assurance that the policy will be adopted and go into effect before the fourth year of such assistance.

[(c) Fifth and Succeeding Years.—In order to be eligible for a grant under section 673 for a fifth and any succeeding year of a State's participation under this part, a State shall include in its application under section 678 for that year information and assurances demonstrating to the satisfaction of the Secretary that the State has in effect the statewide system required by section 676 and a description of services to be provided under section 676(b)(2).

[(d) Exception.—Notwithstanding subsections (a) and (b), a State which has in effect a State law, enacted before September 1, 1986, that requires the provision of free appropriate public education to children with disabilities from birth through age 2, inclusive, shall be eligible for a grant under section 673 for the first through fourth years of a State's participation under this part.

[(e) Differential Funding for Fourth or Fifth Year.—

[(1) In general.—Notwithstanding any other provision of this part, a State shall be eligible for a grant under section 673 for fiscal years 1990, 1991, or 1992 if—

[(A) the State satisfies the eligibility criteria described in subsection (b)(1) pertaining to the State's third or fourth year of participation under this part; and

[(B) the Governor, on behalf of the State, submits, by a date that the Secretary may establish for each such year, a request for extended participation, including—

[(i) information demonstrating to the Secretary's satisfaction that the State is experiencing significant hardships in meeting the requirements of this section for the fourth or fifth year of participation; and

[(ii) a plan, including timelines, for meeting the eligibility criteria described in subsections (b)(1) and (c) for the fourth, fifth, or succeeding years of participation.

[(2) Approval of request.—

[(A) First year.—The Secretary shall approve a State's request for a first year of extended participation under this subsection if the State meets the requirements of paragraph (1).

[(B) Second year.—The Secretary shall approve a State's request for a second year of extended participation under this subsection if the State—

[(i) meets the requirements of paragraph (1); and

[(ii) demonstrates to the Secretary's satisfaction that the State has made reasonable progress in implementing the plan described in paragraph (1)(B)(ii).

[(3) DURATION.—The Secretary may not approve more than two requests from the same State for extended participation under this subsection.

[(4) PAYMENT.—

[(A) FISCAL YEAR 1990.—Notwithstanding any other provision of law, each State qualifying for extended participation under this subsection for fiscal year 1990 shall receive a payment under this part in an amount equal to such State's payment under this part for fiscal year 1989.

[(B) FISCAL YEAR 1991 OR 1992.—Except as provided in subparagraph (C) and notwithstanding any other provision of law, each State qualifying for extended participation under this subsection for fiscal year 1991 or fiscal year 1992 shall receive a payment under this part for such fiscal years in an amount equal to the payment such State would have received under this part for fiscal year 1990 if such State had met the criteria for the fourth year of participation described in subsection (b)(1).

[(C) MINIMUM PAYMENT FOR FISCAL YEAR 1991 OR 1992 FOR CERTAIN STATES.—Notwithstanding any other provision of law, each State qualifying for extended participation under this subsection for fiscal year 1991 or fiscal year 1992 shall receive a payment under this part of not less than $500,000. For purposes of the preceding sentence, the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

[(5) REALLOTMENT.—

[(A) FISCAL YEAR 1990.—The amount by which the allotment computed under section 684 for any State for fiscal year 1990 exceeds the amount that such State may be allotted under paragraph (4)(A) of this subsection (and, notwithstanding section 684(d), any fiscal year 1990 funds allotted to any State that such State elects not to receive) shall be reallotted, notwithstanding the percentage limitations set forth in sections 684 (a) and (b), among those States satisfying the eligibility criteria of subsection (b)(1) for the fourth year of participation that have submitted an application by a date that the Secretary may establish in an amount which bears the same ratio to such amount as the amount of such State's allotment under section 684 as modified by this subsection in such fiscal year bears to the amount of all such States' allotment under section 684 as modified by this subsection in such fiscal year.

[(B) FISCAL YEAR 1991 OR 1992.—The amount by which a State's allotment computed under section 684 for any State for fiscal years 1991 or 1992 exceeds the amount that such State may be allotted for such fiscal year under paragraph (4)(B) of this subsection shall be reallotted, notwithstanding the percentage limitations set forth in section 684 (a) and (b)—

[(i) first, among those States satisfying the eligibility criteria of subsection (c) for the fifth year of participation that have submitted applications by a date that the Secretary may establish for each such year in an amount which bears the same ratio to such amount as the amount of such State's allotment under section 684 as modified by this subsection in such fiscal year bears to the amount of all such States' allotment under section 684 as modified by this subsection in such fiscal year, except that no such State, by operation of this clause, shall receive an increase of more than 100 percent over the amount such State would have otherwise received under section 684 for the previous fiscal year;

[(ii) second, if funds remain, among those States that have—

[(I) satisfied the eligibility criteria of subsection (b)(1) for the fourth year of participation;

[(II) qualified for extended participation under this subsection; and

[(III) not received a reallotment payment under clause (i),

in an amount which bears the same ratio to such amount as the amount of such State's allotment under section 684 as modified by this subsection in such fiscal year bears to the amount of all such States' allotment under section 684 as modified by this subsection in such fiscal year, except that no State, by operation of this clause, shall receive a reallotment payment that is larger than the payment such State would otherwise have received under section 684 for such year; and

[(iii) third, if funds remain, among those States satisfying the eligibility criteria of subsection (c) for the fifth year of participation that did not receive a reallotment payment under clause (ii) in an amount which bears the same ratio to such amount as the amount of such State's allotment under section 684 as modified by this subsection in such fiscal year bears to the amount of all such States' allotment under section 684 as modified by this subsection in such fiscal year.

[(6) DEFINITIONS.—For the purpose of this subsection, the term "State", except as provided in paragraph (4)(C), means—

[(A) each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico;

[(B) each of the jurisdictions listed in section 684(a); and

[(C) the Department of the Interior.

[REQUIREMENTS FOR STATEWIDE SYSTEM

[SEC. 676. (a) IN GENERAL.—A statewide system of coordinated, comprehensive, multidisciplinary, interagency programs providing appropriate early intervention services to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities on reservations, shall include the minimum components under subsection (b).

[(b) MINIMUM COMPONENTS.—The statewide system required by subsection (a) shall include, at a minimum—

[(1) a definition of the term "developmentally delayed" that will be used by the State in carrying out programs under this part,

[(2) timetables for ensuring that appropriate early intervention services will be available to all infants and toddlers with disabilities in the State, including Indian infants and toddlers with disabilities on reservations, before the beginning of the fifth year of a State's participation under this part,

[(3) a timely, comprehensive, multidisciplinary evaluation of the functioning of each infant and toddler with a disability in the State and the needs of the families to appropriately assist in the development of the infant or toddler with a disability,

[(4) for each infant and toddler with a disability in the State, an individualized family service plan in accordance with section 677, including service coordination services in accordance with such service plan,

[(5) a comprehensive child find system, consistent with part B of this Act, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources,

[(6) a public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency to all primary referral sources of information materials for parents on the availability of early intervention services, and procedures for determining the extent to which primary referral sources, especially hospitals and physicians, disseminate information on the availability of early intervention services to parents of infants with disabilities,

[(7) a central directory which includes early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State,

[(8) a comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources respecting the basic components of early intervention services available in the State, that is consistent with the comprehensive system of personnel development described in section 613(a)(3) and that may include—

[(A) implementing innovative strategies and activities for the recruitment and retention of early intervention service providers,

[(B) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part,

[(C) training personnel to work in rural areas, and

[(D) training personnel to coordinate transition services for infants and toddlers with disabilities from an early intervention program under this part to a preschool program under section 619 of part B.

[(9) a single line of responsibility in a lead agency designated or established by the Governor for carrying out—

[(A) the general administration and supervision of programs and activities receiving assistance under section

673, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 673, to ensure that the State complies with this part,

[(B) the identification and coordination of all available resources within the State from Federal, State, local and private sources,

[(C) the assignment of financial responsibility in accordance with section 678(a)(2) to the appropriate agencies,

[(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families in a timely manner pending the resolution of any disputes among public agencies or service providers,

[(E) the resolution of intra- and interagency disputes, and

[(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination,

[(10) a policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements,

[(11) a procedure for securing timely reimbursement of funds used under this part in accordance with section 681(a),

[(12) procedural safeguards with respect to programs under this part as required by section 680,

[(13) policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including—

[(A) the establishment and maintenance of standards which are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing early intervention services, and

[(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State, and

[(14) a system for compiling data on the numbers of infants and toddlers with disabilities and their families in the State in need of appropriate early intervention services (which may be based on a sampling of data), the numbers of such infants and toddlers and their families served, the types of services provided (which may be based on a sampling of data), and other information required by the Secretary.

[INDIVIDUALIZED FAMILY SERVICE PLAN

[SEC. 677. (a) ASSESSMENT AND PROGRAM DEVELOPMENT.—Each infant or toddler with a disability and the infant's or toddler's family shall receive—

[(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs,

[(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability, and

[(3) a written individualized family service plan developed by a multidisciplinary team, including the parent or guardian, as required by subsection (d).

[(b) PERIODIC REVIEW.—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

[(c) PROMPTNESS AFTER ASSESSMENT.—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parent's consent, early intervention services may commence prior to the completion of such assessment.

[(d) CONTENT OF PLAN.—The individualized family service plan shall be in writing and contain—

[(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on acceptable objective criteria,

[(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability,

[(3) a statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary,

[(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and the method of delivering services,

[(5) a statement of the natural environments in which early intervention services shall appropriately be provided,

[(6) the projected dates for initiation of services and the anticipated duration of such services,

[(7) the name of the case manager (hereafter in this part referred to as the "service coordinator") from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, and

[(8) the steps to be taken supporting the transition of the toddler with a disability to services provided under part B of this Act to the extent such services are considered appropriate.

[(e) PARENTAL CONSENT.—The contents of the individualized family service plan shall be fully explained to the parents or guardian and informed written consent from such parents or guardian shall be obtained prior to the provision of early intervention services described in such plan. If such parents or guardian do not provide such consent with respect to a particular early intervention service, then the early intervention services to which such consent is obtained shall be provided.

[STATE APPLICATION AND ASSURANCES

[SEC. 678. (a) APPLICATION.—Any State desiring to receive a grant under section 673 for any year shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require by regulation. Such an application shall contain—

[(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 673,

[(2) a designation by the State of an individual or entity responsible for assigning financial responsibility among appropriate agencies,

[(3) information demonstrating eligibility of the State under section 674,

[(4) the information or assurances required to demonstrate eligibility of the State for the particular year of participation under section 675,

[(5)(A) information demonstrating that the State has provided (i) public hearings, (ii) adequate notice of such hearings, and (iii) an opportunity for comment to the general public before the submission of such application and before the adoption by the State of the policies described in such application, and (B) a summary of the public comments and the State's responses,

[(6) a description of the uses for which funds will be expended in accordance with this part and, for the fifth and succeeding fiscal years, a description of the services to be provided,

[(7) a description of the procedure used to ensure an equitable distribution of resources made available under this part among all geographic areas within the State,

[(8) a description of the policies and procedures used to ensure a smooth transition for individuals participating in the early intervention program under this part who are eligible for participation in preschool programs under part B, including a description of how the families will be included in the transitional plans and how the lead agency under this part will notify the appropriate local educational agency or intermediate educational unit in which the child resides and convene, with the approval of the family, a conference between the lead agency, the family, and such agency or unit at least 90 days before such child is eligible for the preschool program under part B in accordance with State law, and to review the child's program options, for the period commencing on the day a child turns 3 running through the remainder of the school year, and to establish a transition plan, and

[(9) such other information and assurances as the Secretary may reasonably require by regulation.

[(b) STATEMENT OF ASSURANCES.—Any State desiring to receive a grant under section 673 shall file with the Secretary a statement at such time and in such manner as the Secretary may reasonably require by regulation. Such statement shall—

[(1) assure that funds paid to the State under section 673 will be expended in accordance with this part,

[(2) contain assurances that the State will comply with the requirements of section 681,

[(3) provide satisfactory assurance that the control of funds provided under section 673, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property,

[(4) provide for (A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part, and (B) keeping such records and affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part,

[(5) provide satisfactory assurance that Federal funds made available under section 673 (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant such State and local funds,

[(6) provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under section 673 to the State,

[(7) beginning in fiscal year 1992, provide satisfactory assurance that policies and practices have been adopted to ensure meaningful involvement of traditionally underserved groups, including minority, low-income, and rural families, in the planning and implementation of all the requirements of this part and to ensure that such families have access to culturally competent services within their local areas, and

[(8) such other information and assurances as the Secretary may reasonably require by regulation.

[(c) APPROVAL OF APPLICATION AND ASSURANCES REQUIRED.—No State may receive a grant under section 673 unless the Secretary has approved the application and statement of assurances of that State. The Secretary shall not disapprove such an application or statement of assurances unless the Secretary determines, after notice and opportunity for a hearing, that the application or statement of assurances fails to comply with the requirements of this section.

[USES OF FUNDS

[SEC. 679. In addition to using funds provided under section 673 to plan, develop, and implement the statewide system required by section 676, a State may use such funds—

[(1) for direct services for infants and toddlers with disabilities and their families that are not otherwise provided from other public or private sources,

[(2) to expand and improve on services for infants and toddlers with disabilities and their families that are otherwise available, and

[(3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year.

[PROCEDURAL SAFEGUARDS

[SEC. 680. The procedural safeguards required to be included in a statewide system under section 676(b)(12) shall provide, at a minimum, the following:

[(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

[(2) The right to confidentiality of personally identifiable information, including the right of parents or guardians to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

[(3) The right of the parents or guardian to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.

[(4) The opportunity for parents or a guardian to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

[(5) Procedures to protect the rights of the infant or toddler with a disability whenever the parents or guardian of the child are not known or unavailable or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State agency providing services) to act as a surrogate for the parents or guardian.

[(6) Written prior notice to the parents or guardian of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or the provision of appropriate early intervention services to the infant or toddler with a disability.

[(7) Procedures designed to assure that the notice required by paragraph (6) fully informs the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

[(8) During the pendency of any proceeding or action involving a complaint, unless the State agency and the parents or guardian otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

[PAYOR OF LAST RESORT

[SEC. 681. (a) NONSUBSTITUTION.—Funds provided under section 673 may not be used to satisfy a financial commitment for services which would have been paid for from another public or private source but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by the infant or toddler or family in a timely fashion, funds provided under section 673 may be used to pay the provider of services pending reimbursement from the agency which has ultimate responsibility for the payment.

[(b) REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to medicaid for infants or toddlers with disabilities) within the State.

[STATE INTERAGENCY COORDINATING COUNCIL

[SEC. 682. (a) ESTABLISHMENT.—(1) Any State which desires to receive financial assistance under section 673 shall establish a State Interagency Coordinating Council composed of at least 15 members but not more than 25 members, unless the State provides sufficient justification for a greater number of members in the application submitted pursuant to section 678.

[(2) The Council shall be appointed by the Governor. In making appointments to the Council, the Governor shall ensure that the membership of the Council reasonably represents the population of the State.

[(3) The Governor shall designate a member of the Council to serve as the chairperson of the Council, or shall require the Council to so designate such a member. Any member of the Council who is a representative of the lead agency designated under section 676(b)(9) may not serve as the chairperson of the Council.

[(b) COMPOSITION.—(1) The Council shall be composed as follows:

[(A) At least 20 percent of the members shall be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

[(B) At least 20 percent of the members shall be public or private providers of early intervention services.

[(C) At least one member shall be from the State legislature.

[(D) At least one member shall be involved in personnel preparation.

[(E) At least one member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

[(F) At least one member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.

[(G) At least one member shall be from the agency responsible for the State governance of insurance, especially in the area of health insurance.

[(2) The Council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs, or where there is no BIA operated or funded school, from the Indian Health Service or the tribe/tribal council.

[(c) MEETINGS.—The Council shall meet at least quarterly and in such places as it deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

[(d) MANAGEMENT AUTHORITY.—Subject to the approval of the Governor, the Council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care for parent representatives), to pay compensation to a member of the Council if such member is not employed or must forfeit wages from other employment when performing official Council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

[(e) FUNCTIONS OF COUNCIL.—(1) The Council shall—

[(A) advise and assist the lead agency designated or established under section 676(b)(9) in the performance of the responsibilities set out in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements,

[(B) advise and assist the lead agency in the preparation of applications and amendments thereto,

[(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to services provided under part B, to the extent such services are appropriate, and

[(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

[(2) The Council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children aged birth to 5, inclusive.

[(f) CONFLICT OF INTEREST.—No member of the Council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

[(g) USE OF EXISTING COUNCILS.—To the extent that a State has established a Council before September 1, 1986, that is comparable to the Council described in this section, such Council shall be considered to be in compliance with this section. Within 4 years after the date the State accepts funds under section 673, such State shall establish a council that complies in full with this section.

[FEDERAL ADMINISTRATION

[SEC. 683. Sections 616, 617, and 620 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—

[(1) any reference to a State educational agency shall be deemed to be a reference to the State agency established or designated under section 676(b)(9),

[(2) any reference to the education of children with disabilities and the education of all children with disabilities and the provision of free public education to all children with disabilities shall be deemed to be a reference to the provision of services to infants and toddlers with disabilities in accordance with this part, and

[(3) any reference to local educational agencies and intermediate educational agencies shall be deemed to be a reference to local service providers under this part.

[ALLOCATION OF FUNDS

[SEC. 684. (a) From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve 1 percent for payments to Guam, American Samoa, the Virgin Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs.

[(b)(1) The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortium of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for that fiscal year.

[(2) The Secretary of the Interior shall distribute the total amount of the 1.25 percent under paragraph (1) in the following manner:

[(A) For the first fiscal year, each tribe or tribal organization shall receive an amount proportionate to the amount of weighted student units for special education programs for BIA operated or funded schools serving such reservation generated under the formula established under section 1128 of the Education Amendments of 1978, divided by the total number of such students in all BIA operated or funded schools.

[(B) For each fiscal year thereafter, each tribe or tribal organization shall receive an amount based on the number of infants and toddlers residing on the reservation as determined annually divided by the total of such children served by all tribes or tribal organizations.

[(3) To receive a payment under this paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as are needed to determine the amounts to be allocated under paragraph (2).

[(4) The funds received by a tribe or tribal organization shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children aged 0–2, inclusive, and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe and tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

[(5) To be eligible to receive a grant pursuant to paragraph (2), the tribe or tribal organization shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the one in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 611(f)(3)(D) of this Act. The Secretary of Education may require any additional information from the Secretary of the Interior.

[(6) None of the funds under this subsection can be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

[(c)

[(1) Except as provided in paragraphs (3), (4), and (5) from the funds remaining for each fiscal year after the reservation and payments under subsections (a) and (b), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

[(2) For fiscal year 1995 only, the Secretary shall allot $34,000,000 of the remaining funds described in paragraph (1) among the States in proportion to their relative numbers of infants and toddlers with disabilities who—

[(A) are counted on December 1, 1994; and

[(B) would have been eligible to be counted under section 1221(c)(1) of the Elementary and Secondary Education Act of 1965 (as such section was in effect on the day preceding the date of the enactment of the Improving America's Schools Act of 1994).

[(3) Except as provided in paragraphs (4) and (5), no State shall receive an amount under this section for any fiscal year that is less than the greater of—

[(A) one-half of one percent of the remaining amount described in paragraph (1), excluding any amounts allotted under paragraph (2); or

[(B) $500,000.

[(4)(A) Except as provided in paragraph (5), no State shall receive an amount under this section for any of the fiscal years 1995 through 1999 that is less than the sum of the amount such State received for fiscal year 1994 under—

[(i) this part; and

[(ii) subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as such subpart was in existence on the day preceding the date of enactment of the Improving America's Schools Act of 1994) for children with disabilities from birth through age 2.

[(B) If, for fiscal year 1998 or 1999, the number of infants and toddlers in any State, as determined under paragraph (1), is less than the number of infants and toddlers so determined for fiscal year 1994, the amount determined under subparagraph (A) for that State shall be reduced by the same percentage by which the number of those infants and toddlers so declined.

[(5)(A) If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allocations to such States for such year.

[(B) If additional funds become available for making payments under this subsection for such fiscal year, allocations that were reduced under subparagraph (A) shall be increased on the same basis as such allocations were reduced.

[(6) For the purpose of paragraph (1)—

[(A) the terms "infants" and "toddlers" mean children from birth to age 2, inclusive, and

[(B) the term "State" does not include the jurisdictions described in subsection (a).

[(d) If any State elects not to receive its allotment under subsection (c)(1), the Secretary shall reallot, among the remaining States, amounts from such State in accordance with such subsection.

[FEDERAL INTERAGENCY COORDINATING COUNCIL

[SEC. 685. (a) ESTABLISHMENT AND PURPOSE.—

[(1) IN GENERAL.—The Secretary shall establish a Federal Interagency Coordinating Council in order to—

[(A) minimize duplication of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families, and preschool services for children with disabilities, across Federal, State, and local agencies;

[(B) ensure the effective coordination of Federal early intervention and preschool programs and policies across Federal agencies;

[(C) coordinate the provision of Federal technical assistance and support activities to States;

[(D) identify gaps in Federal agency programs and services; and

[(E) identify barriers to Federal interagency cooperation.

[(2) APPOINTMENTS.—The council established under paragraph (1) (hereafter in this section referred to as the "Council") and the chairperson of the Council shall be appointed by the Secretary in consultation with other appropriate Federal agencies. In making the appointments, the Secretary shall ensure that each member has sufficient authority to engage in policy planning and implementation on behalf of the department, agency, or program that such member represents.

[(b) COMPOSITION.—The Council shall be composed of—

[(1) a representative of the Office of Special Education Programs;

[(2) a representative of the National Institute on Disability and Rehabilitation Research;

[(3) a representative of the Maternal and Child Health Services Block Grant Program;

[(4) a representative of programs assisted under the Developmental Disabilities Assistance and Bill of Rights Act;

[(5) a representative of the Health Care Financing Administration;

[(6) a representative of the Division of Birth Defects and Developmental Disabilities of the Centers for Disease Control;

[(7) a representative of the Social Security Administration;

[(8) a representative of the special supplemental nutrition program for women, infants, and children of the Department of Agriculture;

[(9) a representative of the National Institute of Mental Health;

[(10) a representative of the National Institute of Child Health and Human Development;

[(11) a representative of the Bureau of Indian Affairs of the Department of the Interior;

[(12) a representative of the Indian Health Service;

[(13) a representative of the Surgeon General;

[(14) a representative of the Department of Defense;

[(15) a representative of the Administration for Children and Families;

[(16) a representative of the Alcohol, Drug Abuse and Mental Health Administration

[(17) a representative of the Pediatric Aids Health Care Demonstration Program in the Public Health Service;

[(18) at least 3 parents of children with disabilities age 12 or under, of whom at least one must have a child with a disability under the age of 6;

[(19) at least 2 representatives of State lead agencies for early intervention services to infants and toddlers, one of which must be a representative of a State educational agency and the other a representative of a noneducational agency;

[(20) other members representing appropriate agencies involved in the provision of, or payment for, early intervention services and special education and related services to infants and toddlers with disabilities and their families and preschool children with disabilities; and

[(21) other persons appointed by the Secretary.

[(c) MEETINGS.—The Council shall meet at least quarterly and in such places as the Council deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

[(d) FUNCTIONS OF THE COUNCIL.—The Council shall—

[(1) advise and assist the Secretary in the performance of the Secretary's responsibilities described in this part;

[(2) conduct policy analyses of Federal programs related to the provision of early intervention services and special educational and related services to infants and toddlers with disabilities and their families, and preschool children with disabilities, in order to determine areas of conflict, overlap, duplication, or inappropriate omission;

[(3) identify strategies to address issues described in paragraph (2);

[(4) develop and recommend joint policy memoranda concerning effective interagency collaboration, including modifications to regulations, and the elimination of barriers to interagency programs and activities;

[(5) coordinate technical assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention programming for infants and toddlers with disabilities and their families and preschool children with disabilities; and

[(6) facilitate activities in support of States' interagency coordination efforts.

[(e) CONFLICT OF INTEREST.—No member of the Council shall cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under Federal law.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 686. There are authorized to be appropriated to carry out this part $220,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994.

[PART I—FAMILY SUPPORT

[SEC. 701. SHORT TITLE.

[This part may be cited as the "Families of Children With Disabilities Support Act of 1994".

[SEC. 702. FINDINGS, PURPOSES, AND POLICY.

[(a) FINDINGS.—The Congress makes the following findings:

[(1) It is in the best interest of our Nation to preserve, strengthen, and maintain the family.

[(2) Families are the greatest natural resource available to their children and are the major providers of support, care, and training of their children.

[(3) Families of children with disabilities enrich the lives of all citizens through the contributions of such families to the economic, health, and social fabric of their community, State, and Nation.

[(4) A growing number of families are searching for ways to empower themselves to raise their children with disabilities at home and in their communities. Supporting such families to enable them to care for their children with disabilities at home is efficient and can be cost-effective.

[(5) Children, including children with disabilities, benefit from enduring family relationships in a nurturing home environment.

[(6) Many families experience exceptionally high financial outlays and significant physical and emotional challenges in meeting the special needs of their children with disabilities.

[(7) There are financial disincentives for families to care for their children with disabilities at home.

[(8) Most families of children with disabilities do not have access to family-centered and family-directed services to support such families in their efforts to care for their children with disabilities at home.

[(9) There is a need in each State for a comprehensive, coordinated, interagency system of family support for families of children with disabilities that is family-centered and family-directed, is easily accessible, avoids duplication, uses existing resources more efficiently, and prevents gaps in services to families in all areas of the State.

[(10) The goals of the Nation properly include the goal of providing families of children with disabilities the family support necessary to accomplish the following:

[(A) To support the family.

[(B) To enable families of children with disabilities to nurture and enjoy their children at home.

[(C) To enable families of children with disabilities to make informed choices and decisions regarding the nature of services, supports, and resources made available to such families.

[(b) PURPOSES.—The purposes of this part are as follows:

[(1) To provide financial assistance to the States to support systems change activities designed to assist each State to develop and implement, or expand and enhance, a family-centered and family-directed, culturally competent, community-centered, comprehensive, statewide system of family support for families of children with disabilities that is designed to—

[(A) ensure the full participation, choice and control of families of children with disabilities in decisions related to the provision of such family support for their family;

[(B) ensure the active involvement of families of children with disabilities in the planning, development, implementation, and evaluation of such a statewide system;

[(C) increase the availability of, funding for, access to, and provision of family support for families of children with disabilities;

[(D) promote training activities that are family-centered and family-directed and that enhance the ability of family members of children with disabilities to increase participation, choice, and control in the provision of family support for families of children with disabilities;

[(E) increase and promote interagency coordination among State agencies, and between State agencies and private entities that are involved in carrying out activities under section 708; and

[(F) increase the awareness of laws, regulations, policies, practices, procedures, and organizational structures, which facilitate or impede the availability or provision of family support for families of children with disabilities.

[(2) To enhance the ability of the Federal Government to—

[(A) identify Federal policies that facilitate or impede family support for families of children with disabilities, and that are consistent with the principles in subsection (c);

[(B) provide States with technical assistance and information relating to the provision of family support for families of children with disabilities;

[(C) conduct an evaluation of the program of grants to States; and

[(D) provide funding for model demonstration and innovation projects.

[(c) POLICY.—It is the policy of the United States that all programs, projects, and activities receiving assistance under this part shall be family-centered and family-directed and shall be carried out in a manner consistent with the following principles:

[(1) Family support for families of children with disabilities must focus on the needs of the entire family.

[(2) Families of children with disabilities should be supported in determining their needs and in making decisions concerning necessary, desirable, and appropriate services.

[(3) Families should play decisionmaking roles in policies and programs that affect the lives of such families.

[(4) Family needs change over time and family support for families of children with disabilities must offer options that are flexible and responsive to the unique needs and strengths and cultural values of individual families.

[(5) Family support for families of children with disabilities is proactive and not solely in response to a crisis.

[(6) Families must be supported in their efforts to promote the integration and inclusion of their children with disabilities into all aspects of community life.

[(7) Family support for families of children with disabilities should promote the use of existing social networks, strengthen natural sources of support, and help build connections to existing community resources and services.

[(8) Youth with disabilities should be involved in decisionmaking about their own lives, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of each such youth.

[(9) Services and supports must be provided in a manner that demonstrates respect for individual dignity, personal responsibility, self-determination, personal preferences, and cultural differences of families.

[(d) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to prevent families from choosing an out-of-home placement for their children with disabilities, including institutional placement for such children.

(20 U.S.C. 1491a)

[SEC. 703. DEFINITIONS.

[For the purposes of this part, only the following definitions shall apply:

[(1) CHILD WITH A DISABILITY.—The term "child with a disability" means an individual who from birth through 21 years of age meets the definition of disability under paragraph (4).

[(2) COUNCIL.—The term "Council" means an existing Council, or a new Council, which is considered as a State Policy Council for Families of Children with Disabilities under section 707.

[(3) CULTURALLY COMPETENT.—The term "culturally competent" means services, supports, or other assistance that is conducted or provided in a manner that—

[(A) is responsive to the beliefs, interpersonal styles, attitudes, language, and behaviors of those individuals receiving services; and

[(B) has the greatest likelihood of ensuring maximum participation of such individuals.

[(4) DISABILITY.—The term "disability" means—

[(A) in the case of an individual 6 years of age or older, a significant physical or mental impairment as defined pursuant to State policy to the extent that such policy is established without regard to type of disability; and

[(B) in the case of infants and young children, birth to age 5, inclusive, a substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in a disability if services are not provided.

[(5) EXISTING COUNCIL.—The term "existing Council" means an entity or a committee of an entity that—

[(A) is established by a State prior to the date on which the State submits an application for funding under this part;

[(B) has authority to advise the State with respect to family support for families of children with disabilities; and

[(C) may have the authority to carry out other responsibilities and duties.

[(6) FAMILY.—The term "family" means a group of interdependent persons residing in the same household that consists of a child with a disability and one or more of the following:

[(A) A mother, father, brother, sister or any combination.

[(B) Extended blood relatives, such as a grandparent, aunt, or uncle.

[(C) An adoptive parent.

[(D) One or more persons to whom legal custody of a child with a disability has been given by a court.

[(E) A person providing short-term foster care that includes a family reunification plan with the biological family.

[(F) A person providing long-term foster care for a child with a disability.

The term does not include employees who, acting in their paid employment capacity, provide services to children with disabilities in out-of-home settings such as hospitals, nursing homes, personal care homes, board and care homes, group homes, or other facilities.

[(7) FAMILY-CENTERED AND FAMILY-DIRECTED.—The term "family-centered and family-directed" means, with respect to a service or program, that the service or program—

[(A) facilitates the full participation, choice, and control by families of children with disabilities in—

[(i) decisions relating to the supports that will meet the priorities of the family; and

[(ii) the planning, development, implementation, and evaluation of the statewide system of family support for families of children with disabilities;

[(B) responds to the needs of the entire family of a child with a disability in a timely and appropriate manner; and

[(C) is easily accessible to and usable by families of children with disabilities.

[(8) FAMILY SATISFACTION.—The term "family satisfaction" means the extent to which a service or support meets a need, solves a problem, or adds value for a family, as determined by the individual family.

[(9) FAMILY SUPPORT FOR FAMILIES OF CHILDREN WITH DISABILITIES.—The term "family support for families of children with disabilities"—

[(A) means supports, resources, services, and other assistance provided to families of children with disabilities that are designed to—

[(i) support families in the efforts of such families to raise their children with disabilities in the family home;

[(ii) strengthen the role of the family as primary caregiver;

[(iii) prevent inappropriate and unwanted out-of-the-home placement and maintain family unity; and

[(iv) reunite families with children with disabilities who have been placed out of the home, whenever possible; and

[(B) includes—

[(i) service coordination that includes individualized planning and brokering for services with families in control of decisionmaking;

[(ii) goods and services, which may include specialized diagnosis and evaluation, adaptive equipment, respite care (in and out of the home), personal assistance services, homemaker or chore services, behavioral supports, assistive technology services and devices, permanency or future planning, home and vehicle modifications and repairs, equipment and consumable supplies, transportation, specialized nutrition and clothing, counseling services and mental health services for family members, family education or training services, communication services, crisis intervention, day care and child care for a child with a disability, supports and services for integrated and inclusive community activities, parent or family member support groups, peer support, sitter service or companion service, and education aids; and

[(iii) financial assistance, which may include discretionary cash subsidies, allowances, voucher or reimbursement systems, low-interest loans, or lines of credit.

[(10) INTEGRATION AND INCLUSION.—The term "integration and inclusion" with respect to children with disabilities and their families means—

[(A) the use of the same community resources that are used by and available to other individuals and families;

[(B) the full and active participation in the same community activities and utilization of the same community resources as individuals without disabilities, living, learning, working, and enjoying life in regular contact with individuals without disabilities; and

[(C) having friendships and relationships with individuals and families of their own choosing.

[(11) LEAD ENTITY.—The term "lead entity" means an office or entity described in section 706.

[(12) NEW COUNCIL.—The term "new Council" means a council that is established by a State, and considered as the State Policy Council for Families of Children with Disabilities, under section 707(a).

[(13) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

[(14) SERVICE COORDINATION.—The term "service coordination"—

[(A) means those family-centered and family-directed activities that assist and enable families to receive rights and procedural safeguards and to gain access to social, medical, legal, educational, and other supports and services; and

[(B) includes—

[(i) follow-along services that assure, through a continuing relationship between a family of a child with a disability and an individual or entity, that the changing needs of the child and family are recognized and appropriately met;

[(ii) the coordination and monitoring of services provided to children with disabilities and their families;

[(iii) the provision of information to children with disabilities and their families about the availability of services and assistance to such children and their families in obtaining appropriate services; and

[(iv) the facilitation and organization of existing social networks, and natural sources of support, and community resources and services.

[(15) STATEWIDE SYSTEM OF FAMILY SUPPORT.—The term "statewide system of family support for families of children with disabilities" means a family-centered and family-directed, culturally competent, community-centered, comprehensive, statewide system of family support for families of children with disabilities developed and implemented by a State under this part that—

[(A) addresses the needs of all families of children with disabilities, including unserved and underserved populations; and

[(B) addresses such needs without regard to the age, type of disability, race, ethnicity, or gender of such children or the particular major life activity for which such children need the assistance.

[(16) SYSTEMS CHANGE ACTIVITIES.—The term "systems change activities" means efforts that result in laws, regulations, policies, practices, or organizational structures—

[(A) that are family-centered and family-directed;

[(B) that facilitate and increase access to, provision of, and funding for, family support services for families of children with disabilities; and

[(C) that otherwise accomplish the purposes of this part.

[(17) UNSERVED AND UNDERSERVED POPULATIONS.—The term "unserved and underserved populations" includes populations such as individuals from racial and ethnic minority backgrounds, economically disadvantaged individuals, individuals with limited-English proficiency, individuals from underserved geographic areas (rural or urban), and specific groups of individuals within the population of individuals with disabilities, including individuals with disabilities attributable to physical impairment, mental impairment, or a combination of physical and mental impairments.

[SEC. 704. GRANTS TO STATES.

[(a) IN GENERAL.—The Secretary shall make grants to States on a competitive basis, in accordance with the provisions of this part, to support systems change activities designed to assist States to develop and implement, or expand and enhance, a statewide system of family support for families of children with disabilities that accomplishes the purposes described in section 702.

[(b) AWARD PERIOD AND GRANT LIMITATION.—No grant shall be awarded for a period greater than 3 years. A State shall be eligible for not more than one grant.

[(c) AMOUNT OF GRANTS.—

[(1) GRANTS TO STATES.—

[(A) FEDERAL MATCHING SHARE.—From amounts appropriated under section 716(a), the Secretary shall pay to each State that has an application approved under section 705, for each year of the grant period, an amount that is—

[(i) equal to 75 percent of the cost of the systems change activities to be carried out by the State; and

[(ii) not less than $200,000 and not more than $500,000.

[(B) NON-FEDERAL SHARE.—The non-Federal share of payments under this paragraph may be in cash or in kind fairly evaluated, including planned equipment or services.

[(2) GRANTS TO TERRITORIES.—From amounts appropriated under section 716(a) for any fiscal year, the Secretary shall pay to each territory that has an application approved under section 705 not more than $100,000.

[(3) CALCULATION OF AMOUNTS.—The Secretary shall calculate a grant amount described in paragraph (1) or (2) on the basis of the following:

[(A) The amounts available for making grants under this section.

[(B) The child population of the State or territory concerned.

[(4) DEFINITIONS.—As used in this subsection:

[(A) STATE.—The term "State" means each of the 50 States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

[(B) TERRITORY.—The term "territory" means the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Republic of Palau (upon the entry into force and effect of the Compact of Free Association between the United States and the Republic of Palau).

[(d) PRIORITY FOR PREVIOUSLY PARTICIPATING STATES.—Amounts appropriated for purposes of carrying out the provisions of this section in each of the 2 fiscal years succeeding the fiscal year in which amounts are first appropriated for such purposes shall first be made available to a State that—

[(1) received a grant under this section during the fiscal year preceding the fiscal year concerned; and

[(2) is making significant progress in accordance with section 710.

[(e) Priorities for Distribution.—To the extent practicable, the Secretary shall award grants to States under this section in a manner that—

[(1) is geographically equitable; and

[(2) distributes the grants among States that have differing levels of development of statewide systems of family support for families of children with disabilities.

[SEC. 705. APPLICATION.

[A State that desires to receive a grant under this part shall submit an application to the Secretary that contains the following information and assurances:

[(1) Family-centered and family-directed approach.—An assurance that the State will use funds made available under this part to accomplish the purposes described in section 702 and the goals, objectives, and family-centered outcomes described in section 709(b) by carrying out systems change activities in partnership with families and in a manner that is family-centered and family-directed.

[(2) Designation of the lead entity.—Information identifying the lead entity, and evidence documenting the abilities of such entity.

[(3) State policy council for families of children with disabilities.—An assurance of the following:

[(A) The State has designated or established Council that meets the criteria set forth in section 707.

[(B) The lead entity will seek and consider on a regular and ongoing basis advice from the Council regarding the development and implementation of the strategic plan under section 709, and other policies and procedures of general applicability pertaining to the provision of family support for families of children with disabilities in the State.

[(C) The lead entity will include, in its annual progress reports, a summary of advice provided by the Council, including recommendations from the annual report of the Council and the response of the lead entity to such advice and recommendations.

[(D) The lead entity will transmit to the Council any other plans, reports, and other information required under this part.

[(4) Family involvement.—A description of the following:

[(A) The nature and extent of the involvement of families of children with disabilities and individuals with disabilities in the development of the application.

[(B) Strategies for actively involving families of children with disabilities and individuals with disabilities in the development, implementation, and evaluation of the statewide system of family support for families of children with disabilities.

[(C) Strategies and special outreach activities that will be undertaken to ensure the active involvement of families of children with disabilities who are members of unserved and underserved populations.

[(D) Strategies for actively involving families of children with disabilities who use family support services in decisions relating to such services.

[(5) Agency involvement.—A description of the nature and extent of involvement of various State agencies or units within State agencies in the preparation of the application and the continuing role of each agency in the statewide system of family support for families of children with disabilities.

[(6) State resources.—A description of the State resources and other resources that are available to commit to the statewide system of family support for families of children with disabilities.

[(7) Unmet needs.—A description of unmet needs for family support for families of children with disabilities within the State.

[(8) Preliminary plan.—A preliminary plan that contains information on the program to be carried out under the grant with respect to the goals and objectives of the State for the program and the activities that the State plans to carry out under the program (including the process for appointing individuals to the Council) and that is consistent with the purposes of this part.

[(9) Activities.—An assurance that, except for the first year of the grant, the State shall expend not less than 65 percent of the funds made available to a State under this part for grants and contracts to conduct the activities described in section 708.

[(10) Limit on administrative costs.—An assurance that the lead entity that receives funding under this part in any fiscal year shall use not more than 5 percent of such funds in such year for administrative expenses. Such administrative expenses shall not include expenses related to the activities of the Council.

[(11) Strategic plan.—A description of the measures that will be taken by the State to develop a strategic plan in accordance with section 709.

[(12) Evaluation.—An assurance that the State will conduct an annual evaluation of the statewide system of family support for families of children with disabilities in accordance with section 710.

[(13) Coordination with state and local councils.—An assurance that the lead entity will coordinate the activities funded through a grant made under this part with the activities carried out by other relevant councils within the State.

[(14) Supplement other funds.—An assurance, with respect to amounts received under a grant, of the following:

[(A) Such grant will be used to supplement and not supplant amounts available from other sources that are expended for programs of family support for families of children with disabilities, including the provision of family support.

[(B) Such grant will not be used to pay a financial obligation for family support for families of children with disabilities that would have been paid with amounts available from other sources if amounts under such grant had not been available.

[(15) OTHER INFORMATION AND ASSURANCES.—Such other information and assurances as the Secretary may reasonably require.

[SEC. 706. DESIGNATION OF THE LEAD ENTITY.

[(a) DESIGNATION.—The Chief Executive Officer of a State that desires to receive a grant under section 704, shall designate the office or entity (referred to in this part as the "lead entity") responsible for—

[(1) submitting the application under section 705 on behalf of the State;

[(2) administering and supervising the use of the amounts made available under the grant;

[(3) coordinating efforts related to and supervising the preparation of the application;

[(4) coordinating the planning, development, implementation (or expansion and enhancement), and evaluation of a statewide system of family support services for families of children with disabilities among public agencies and between public agencies and private agencies, including coordinating efforts related to entering into interagency agreements; and

[(5) coordinating efforts related to the meaningful participation by families in activities carried out under a grant awarded under this part.

[(b) QUALIFICATIONS.—In designating the lead entity, the Chief Executive Officer may designate—

[(1) an office of the Chief Executive Officer;

[(2) a commission appointed by the Chief Executive Officer;

[(3) a public agency;

[(4) a council established under Federal or State law; or

[(5) another appropriate office, agency, or entity.

[(c) CAPABILITIES OF THE LEAD ENTITY.—The State shall provide, in accordance with the requirements of section 705, evidence that the lead entity has the capacity—

[(1) to promote a statewide system of family support for families of children with disabilities throughout the State;

[(2) to promote and implement systems change activities;

[(3) to maximize access to public and private funds for family support services for families of children with disabilities;

[(4) to implement effective strategies for capacity building, family and professional training, and access to and funding for family support services for families of children with disabilities across agencies;

[(5) to promote and facilitate the implementation of family support services for families of children with disabilities that are family-centered and family-directed, and flexible, and that provide families with the greatest possible decisionmaking authority and control regarding the nature and use of services and supports;

[(6) to promote leadership by families in planning, policy development, implementation, and evaluation of family support services for families of children with disabilities, and parent-professional partnerships; and

[(7) to promote and develop interagency coordination and collaboration.

[SEC. 707. STATE POLICY COUNCIL FOR FAMILY SUPPORT FOR FAMILIES OF CHILDREN WITH DISABILITIES.

[(a) DESIGNATION OR ESTABLISHMENT.—A State that desires to receive financial assistance under this part shall, prior to the receipt of funds under this part, designate an existing Council, or establish a new Council, to be considered as a State Policy Council for Families of Children with Disabilities.

[(b) USE OF EXISTING COUNCIL.—

[(1) IN GENERAL.—To the extent that a State has an existing Council, the existing Council shall be considered in compliance with this section if the existing Council meets the requirements under paragraph (2).

[(2) REQUIREMENTS.—An existing Council shall—

[(A) include a majority of members who are family members of children with disabilities and who are children with disabilities (from age 18 to 21);

[(B) in the case in which the existing Council does not represent the full range of families and individuals described in subsection (d)(1), adopt strategies that will ensure the full participation of such families and individuals in all activities carried out by the Council; and

[(C) carry out functions and authorities that are comparable to the functions and authorities described in subsections (e) through (h).

[(3) DOCUMENTATION OF COMPLIANCE.—Any State that has an existing Council shall include in a grant application submitted under section 705 and in subsequent annual progress reports submitted to the Secretary under section 710, a description of the measures that are being taken or that are planned, to ensure that the existing Council of the State complies with this section.

[(c) APPOINTMENTS TO NEW COUNCIL.—

[(1) MEMBERS.—To the extent that a State establishes a new Council, members of the new Council shall be appointed by the Chief Executive Officer of the State or the appropriate official within the State responsible for making appointments in accordance with subsection (d). The appointing authority shall select members after soliciting recommendations from the State Developmental Disabilities Council, parent or family organizations, and other organizations representing the full range of disabilities covered under this part. The appointing authority shall ensure that the membership of the new Council reasonably represents the population of the State and shall establish guidelines for the terms of the members of the new Council.

[(2) CHAIRPERSON.—The new Council shall elect a member of the new Council to serve as the Chairperson of the new Council. The Chairperson shall be a family member, as described in subsection (d)(1).

[(d) COMPOSITION.—The new Council shall be composed of—

[(1) a majority of members who are—

[(A) individuals who are family members of children with disabilities, are eligible for family support, and represent the diversity of families within the State, including those families from unserved and underserved populations; and

[(B) children with disabilities, from age 18 to 21, and are representative of the demographics of the State;

[(2) members—

[(A) who are from State agencies with significant responsibility for the provision of, or payment for, family support services to families of children with disabilities, and who have sufficient authority to engage in policy planning and implementation on behalf of such agencies; and

[(B) who are from the office of the Chief Executive Officer of the State with responsibility with respect to budget and finance; and

[(3) such additional members as the appointing authority considers appropriate.

[(e) FUNCTIONS.—The new Council shall—

[(1) establish formal policies regarding the operation of the new Council;

[(2) advise and assist the lead entity in the performance of responsibilities described in section 706(a), particularly the promotion of interagency agreements and the promotion of meaningful participation by families in all aspects of the statewide system of family support for families of children with disabilities;

[(3) advise and assist State agencies in the development of policies and procedures relating to the provision of family support for families of children with disabilities in the State;

[(4) advise and assist the lead entity in the development of all aspects of a strategic plan under section 709, including—

[(A) the mission, purpose, and principles of the statewide system of family support for families of children with disabilities;

[(B) the statement of family-centered outcomes;

[(C) the goals, objectives, and activities;

[(D) the quality improvement or quality enhancement system;

[(E) the appeals process;

[(F) the eligibility criteria to be used for all programs, projects, and activities carried out under this part;

[(G) the analysis of the extent to which family support for families of children with disabilities is defined as a benefit and not as income; and

[(H) the approach to the evaluation of the statewide system of family support for families of children with disabilities;

[(5) advise and assist the lead entity in the implementation of systems change activities;

[(6) advise and assist the lead entity in assessing family satisfaction with the statewide system of family support for families of children with disabilities;

[(7) review, analyze, and comment on the strategic plan and updates to the plan, progress reports, and annual budgets;

[(8) advise and assist the lead entity in the identification of Federal and State barriers that impede the development of a statewide system of family support for families of children with disabilities; and

[(9) prepare and submit to the Chief Executive Officer of the State, the State legislature, and to the Secretary an annual report on the status of family support services for families of children with disabilities, and make such report available to the public.

[(f) Hearings and Forums.—The new Council is authorized to hold such hearings and forums as the new Council may determine to be necessary to carry out the duties of the new Council.

[(g) Conflict of Interest.—No member of the new Council shall cast a vote on any matter that would provide direct financial benefit to such member or otherwise give the appearance of a conflict of interest under applicable State law.

[(h) Compensation and Expenses.—The new Council may, consistent with State law, use such resources to reimburse members of the new Council for reasonable and necessary expenses of attending the new Council meetings and performing Council duties (including child care and personal assistance services), and to pay compensation to a member of the new Council, if such member is not employed or must forfeit wages from other employment, for each day the member is engaged in performing Council duties.

[SEC. 708. AUTHORIZED ACTIVITIES.

[(a) In General.—A State that receives a grant under section 704 may use the funds made available through the grant to carry out systems change activities, which accomplish the purposes described in section 702, such as the following activities:

[(1) Training and technical assistance.—The State may support training and technical assistance activities for family members, service providers, community members, professionals, members of the Council, students and others that will do the following:

[(A) Increase family participation, choice, and control in the provision of family support for families of children with disabilities.

[(B) Promote partnerships with families of children with disabilities at all levels of the service system.

[(C) Develop or strengthen family-centered and family-directed approaches to services, including service coordination services, service planning services, and respite care services.

[(D) Assist families of children with disabilities in accessing natural and community supports and in obtaining benefits and services.

[(2) Interagency coordination.—The State may support activities that conduct the following:

[(A) Identification and coordination of Federal and State policies, resources, and services, relating to the provision of family support services for families of children with disabilities, including entering into interagency agreements.

[(B) Interagency work groups to enhance public funding options and coordinate access to funding for family support services for families of children with disabilities, with special attention to the issues of family involvement in the identification, planning, use, delivery, and evaluation of such services.

[(C) Documentation and dissemination of information about interagency activities that promote coordination with respect to family support services for families of children with disabilities, including evidence of increased participation of State and local health, maternal and child health, social service, mental health, mental retardation and developmental disabilities, child protection, education, early intervention, developmental disabilities councils, agencies, and departments.

[(3) LOCAL OR REGIONAL COUNCILS.—The State may support the development or enhancement of local or regional councils to review the status of family support for families of children with disabilities in the local or regional area, to advise and assist with the planning, development, implementation, and evaluation of family support for families of children with disabilities in such local or regional area, and to provide recommendations to the State regarding improvements and plans.

[(4) OUTREACH.—The State may conduct outreach activities to locate families who are eligible for family support for families of children with disabilities and to identify groups who are unserved or underserved. Such activities may involve the creation or maintenance of, support of, or provision of, assistance to statewide and community parent organizations, and organizations that provide family support to families of children with disabilities.

[(5) POLICY STUDIES.—The State may support policy studies that relate to the development and implementation, or expansion and enhancement, of a statewide system of family support for families of children with disabilities. Such studies may address issues regarding eligibility and access to services.

[(6) HEARINGS AND FORUMS.—The State may conduct hearings and forums to solicit input from families of children with disabilities regarding family support programs, policies, and plans for such families. Such hearings and forums may be conducted in collaboration with other statewide councils.

[(7) PUBLIC AWARENESS AND EDUCATION.—The State may develop and disseminate information relating to family support for families of children with disabilities designed to provide information to such families, parent groups and organizations, public and private agencies that are in contact with children with disabilities and families of such children, students, policymakers, and the public. Such information may relate to the nature, cost, and availability of, and accessibility to, family support for families of children with disabilities, the impact of family support for families of children with disabilities on other benefits, and the efficacy of family support for families of children with disabilities with respect to enhancing the quality of family life.

[(8) NEEDS ASSESSMENT.—The State may conduct a needs assessment, which may, in part, be based on existing State data.

[(9) PROGRAM DATA.—The State may support the compilation and evaluation of appropriate data related to the statewide system of family support for families of children with disabilities.

[(10) PILOT DEMONSTRATION PROJECTS.—The State may support pilot demonstration projects to demonstrate new approaches to the provision of family support for families of children with disabilities. Such projects may include the demonstration of family-centered and family-directed service coordination, approaches to improve access to services, including independent service coordination, peer support networks, and voucher programs.

[(11) OTHER ACTIVITIES.—The State may support other systems change activities that accomplish the purposes described in section 702.

[(b) SPECIAL RULE.—In carrying out activities authorized under this part, a State shall ensure that such programs and activities address the needs of families who are economically disadvantaged.

[SEC. 709. STRATEGIC PLAN.

[(a) IN GENERAL.—Not later than 6 months after the date on which assistance is received by a State under this part, the lead entity of the State, in conjunction with the Council, shall prepare and submit to the Secretary a strategic plan designed to achieve the purposes and policy of this part.

[(b) CONTENTS.—The strategic plan shall include—

[(1) a statement of the mission, purpose, and principles of the statewide system of family support for families of children with disabilities in the State;

[(2) a statement of family-centered outcomes to be achieved by the statewide system of family support for families of children with disabilities;

[(3) specific goals and objectives for developing and implementing, or expanding and improving, the system for providing family support services for families of children with disabilities, and for achieving the family-centered outcomes;

[(4) systemic approaches for accomplishing the objectives and achieving the family-centered outcomes, including interagency coordination and cooperation, that builds upon state-of-the-art practices and research findings;

[(5) a description of the specific programs, projects, and activities funded under this part and the manner in which the programs, projects, and activities accomplish the objectives and achieve the family-centered outcomes;

[(6) a description of an ongoing quality improvement or quality enhancement system, which utilizes information from ongoing measurements of the extent to which family-centered outcomes are achieved, to improve the system;

[(7) a description of an appeals process that will be used in resolving any disputes families of children with disabilities may have regarding the determination of eligibility or the provision of family support services to the family or to the child with a disability;

[(8) a description of the eligibility criteria to be used to carry out programs, projects, and activities under this part that includes all eligible families;

[(9) an analysis of the extent to which family support for a family of a child with a disability is defined as a benefit and not as income; and

[(10) a description of the plan to conduct an annual evaluation of the statewide system of family support for families of children with disabilities, in conjunction with the Council, to improve such statewide system and to document progress as required by section 710.

[(c) PERIOD AND UPDATES.—The strategic plan shall cover the period of the grant and shall be reviewed and updated on an annual basis to reflect actual experience and family satisfaction information over the preceding year and input from the Council, families of children with disabilities, and other interested parties.

[(d) RECOMMENDATIONS.—Prior to developing the strategic plan, the State shall solicit input and recommendations from interested members of the public, either by holding public hearings or through an alternative method or methods determined by the lead entity in consultation with the Council. The lead entity shall also obtain the comments and recommendations of the Council. The lead entity, in conjunction with the Council, shall consider the recommendations and attempt to reach a consensus with respect to such recommendations. If the lead entity and the Council are unable to reach a consensus, the lead entity shall include a written explanation of the reason a consensus was not reached in the strategic plan.

[(e) COMMENT.—The State shall develop a procedure for ensuring ongoing comment from the Council.

[(f) DISSEMINATION.—The State shall widely disseminate the strategic plan to families of children with disabilities, parent organizations, and other interested persons.

[(g) CONSTRUCTION.—Nothing in this section shall be construed to prevent a State from using an existing statewide strategic plan or parts thereof to meet the requirements of this section as long as such plan or the applicable parts thereof are comparable to the specifications of this section.

[SEC. 710. PROGRESS CRITERIA AND REPORTS.

[(a) GUIDELINES.—The Secretary shall develop guidelines to be used in assessing the extent to which a State that received a grant under section 704 is making significant progress in developing and implementing, or expanding and enhancing, a statewide system of family support for families of children with disabilities consistent with the purposes of this part.

[(b) PROGRESS REPORTS.—A State that receives a grant under section 704 shall submit annually to the Secretary a report that documents progress in developing and implementing, or expanding and enhancing, a statewide system of family support for families of children with disabilities consistent with this part. Such report shall include—

[(1) the results of the annual evaluation of the statewide system of family support for families of children with disabilities;

[(2) a description of the unanticipated problems with the achievement of the goals, objectives, and family-centered outcomes described in the application or strategic plan and the measures the State has taken to rectify such problems;

[(3) for the annual progress report concerning the first year of the grant period, the strategic plan developed by the State during the first year; and

[(4) for the annual progress report concerning subsequent years of the grant period, the updated strategic plan.

[SEC. 711. ADMINISTRATIVE PROVISIONS.

[(a) Evaluation of Grant Applications.—

[(1) Panels.—The Secretary shall convene panels of experts who are competent, by virtue of their training or experience, to evaluate grant applications under this part.

[(2) Composition of panels.—Panels shall be composed of a majority of family members of children with disabilities and individuals with disabilities, and may include service providers, State administrative personnel, and professionals. Panels shall include a majority of individuals who are not Federal employees.

[(3) Expenses and fees of the panel.—A member of the Panel who is not a Federal employee shall receive travel, per diem and consultant fees not to exceed the rate provided to other consultants used by the Secretary. The Secretary may use funds available under section 716 to pay expenses and fees of a member of a Panel who is not a Federal employee.

[(b) Provision of Information.—To assist the Secretary in carrying out the responsibilities of the Secretary under this section, the Secretary may require States to provide relevant information, including recommendations and relevant reports of the Council.

[(c) Appeals.—The Secretary shall establish appeals procedures for States that are found in noncompliance with the provisions of this part as the result of failure to supply information required under section 705 or 710. The Secretary shall take into consideration the comments of the Council.

[(d) Effect on Other Assistance.—This part may not be construed as authorizing a Federal or State agency to reduce medical or other assistance available, or to alter eligibility, under any Federal law.

[(e) Unobligated Funds.—Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such amount was paid.

[SEC. 712. TECHNICAL ASSISTANCE.

[(a) In General.—The Secretary shall make grants, or enter into contracts or cooperative agreements, with appropriate public or private agencies and organizations, including institutions of higher education, with documented experience, expertise, and capacity, for the purpose of providing technical assistance and information with respect to the development and implementation, or expansion and enhancement, of a statewide system of family support for families of children with disabilities.

[(b) PURPOSE.—With respect to States receiving assistance under this part, the technical assistance and information described under subsection (a) shall be provided to the State agency designated as the lead entity, the Council, family members of children with disabilities, organizations, service providers, and policymakers involved with children with disabilities and their families. Such technical assistance shall also be available to States that do not receive assistance under this part. Such technical assistance and information shall—

[(1) facilitate effective systems change activities;

[(2) promote effective approaches to the development and implementation, or expansion and enhancement of, the statewide systems of family support for families of children with disabilities that increase access to, funding for, and awareness of family support for families of children with disabilities;

[(3) promote partnerships with families at all levels of the service system;

[(4) foster awareness and understanding of Federal, State, and local laws, regulations, policies, practices, procedures, and organizational structures, that facilitate, and overcome barriers to, funding for, and access to family support for families of children with disabilities;

[(5) foster the development and replication of effective approaches to strategic plan development, interagency coordination, training, outreach to underserved groups, and public awareness activities;

[(6) facilitate service delivery capacity, training, and the improvement of data collection and evaluation systems;

[(7) promote effective approaches to the development of family-centered and family-directed services, including approaches to the development and measurement of family-centered outcomes described in section 709(b)(2), and the assessment of family satisfaction; and

[(8) coordinate and facilitate an annual meeting of the chairpersons of the Councils.

[(c) REQUEST FOR TECHNICAL ASSISTANCE.—A request for technical assistance by a lead entity in a State receiving assistance under this part shall be made in conjunction with the Council.

[(d) REPORTS TO THE SECRETARY.—An entity providing the technical assistance under this section shall submit periodic reports to the Secretary regarding Federal policies and procedures identified within the States that facilitate or impede the delivery of family support to families of children with disabilities. The report shall include recommendations to the Secretary regarding the delivery of services, coordination with other programs, and integration of the policies and principles described in section 702 in other Federal legislation.

[SEC. 713. EVALUATION.

[(a) IN GENERAL.—The Secretary shall make grants, or enter into contracts or cooperative agreements, with appropriate public or private agencies and organizations, including institutions of higher education, with documented experience, expertise, and capacity for the purpose of conducting a national evaluation of the program of grants to States authorized by this part.

[(b) PURPOSE.—The purpose of an evaluation under subsection (a) shall be to assess the status and effects of State efforts to develop and implement, or expand and enhance, statewide systems of family support for families of children with disabilities in a manner consistent with the provisions of this part, particularly in terms of the impact of such efforts on families of children with disabilities, and to recommend amendments to this part that are necessary to assist States to fully accomplish the purposes of this part. The Secretary or recipient of assistance under this section shall work with the States to consider and develop an information system designed to report and compile, from information provided by the States, including the Council, a qualitative and quantitative description of the impact of the program of grants to States authorized by this part on—

[(1) families of children with disabilities, including families from ethnic and racial minority backgrounds;

[(2) access to and funding for family support for families of children with disabilities; and

[(3) the involvement of families at all levels of the service system.

[(c) REPORT TO CONGRESS.—Not later than 2½ years after the date of enactment of this part, the Secretary shall prepare and submit to the appropriate committees of Congress a report concerning the results of the evaluation conducted under this section.

[(d) CONFLICT OF INTEREST.—The Secretary shall assure that a recipient of a grant, contract, or cooperative agreement under this section is independent from, and free from, any financial or personal relationships with the recipient of a grant, contract, or cooperative agreement selected to provide technical assistance under section 712.

[SEC. 714. PROJECTS OF NATIONAL SIGNIFICANCE.

[(a) STUDY BY THE SECRETARY.—The Secretary shall review Federal programs to determine the extent to which such programs facilitate or impede access to, provision of, and funding for family support for families of children with disabilities, consistent with the policies described in section 702.

[(b) DEMONSTRATION AND INNOVATION PROJECTS.—The Secretary shall make grants or enter into contracts for projects of national significance to support the development of national and State policies and practices related to the development and implementation, or expansion and enhancement, of family-centered and family-directed systems of family support for families of children with disabilities.

[SEC. 715. CONSTRUCTION.

[Notwithstanding any other provision of this title, nothing in parts A through H of this title shall be construed to apply to this part.

[SEC. 716. AUTHORIZATION OF APPROPRIATIONS.

[(a) IN GENERAL.—There are authorized to be appropriated to carry out this part, $10,000,000 for fiscal year 1995, and such sums as may be necessary for each of the fiscal years 1996 and 1997.

[(b) RESERVATION.—

[(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall reserve for each fiscal year 10 percent, or $600,000 (whichever is greater), of the amount appropriated pursuant to the authority of subsection (a) to carry out—

[(A) section 712, with respect to the provision of technical assistance and information to States;

[(B) section 713, with respect to the conduct of the evaluations;

[(C) section 711(a), with respect to the evaluation of grant applications; and

[(D) section 714, with respect to the conduct of projects of national significance.

[(2) SPECIAL RULE.—The Secretary shall only use funds reserved under paragraph (1) for a fiscal year to carry out section 714 for such year if the amount of funds reserved under such paragraph for such fiscal year is $700,000 or greater.]

PART A—GENERAL PROVISIONS

SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS; PURPOSES.

(a) SHORT TITLE.—This Act may be cited as the "Individuals with Disabilities Education Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

PART A—GENERAL PROVISIONS

Sec. 601. Short title; table of contents; findings; purposes.
Sec. 602. Definitions.
Sec. 603. Office of Special Education Programs.
Sec. 604. Abrogation of State sovereign immunity.
Sec. 605. Acquisition of equipment; construction or alteration of facilities.
Sec. 606. Employment of individuals with disabilities.
Sec. 607. Requirements for prescribing regulations.

PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

Sec. 611. Authorization; allotment; use of funds; authorization of appropriations.
Sec. 612. State eligibility.
Sec. 613. Local educational agency eligibility.
Sec. 614. Evaluations, eligibility determinations, individualized education programs, and educational placements.
Sec. 615. Procedural safeguards.
Sec. 616. Withholding and judicial review.
Sec. 617. Administration.
Sec. 618. Program information.
Sec. 619. Preschool grants.

PART C—INFANTS AND TODDLERS WITH DISABILITIES

Sec. 631. Findings and policy.
Sec. 632. Definitions.
Sec. 633. General authority.
Sec. 634. Eligibility.
Sec. 635. Requirements for statewide system.
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(c) FINDINGS.—The Congress finds the following:

(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

(2) Before the date of the enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94–142)—

(A) the special educational needs of children with disabilities were not being fully met;

(B) more than one-half of the children with disabilities in the United States did not receive appropriate educational services that would enable such children to have full equality of opportunity;

(C) 1,000,000 of the children with disabilities in the United States were excluded entirely from the public school system and did not go through the educational process with their peers;

(D) there were many children with disabilities throughout the United States participating in regular school programs whose disabilities prevented such children from having a successful educational experience because their disabilities were undetected; and

(E) because of the lack of adequate services within the public school system, families were often forced to find services outside the public school system, often at great distance from their residence and at their own expense.

(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this Act has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

(4) However, the implementation of this Act has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.

(5) Over 20 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—

(A) having high expectations for such children and ensuring their access in the general curriculum to the maximum extent possible;

(B) strengthening the role of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;

(C) coordinating this Act with other local, educational service agency, State, and Federal school improvement efforts in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where they are sent;

(D) providing appropriate special education and related services and aids and supports in the regular classroom to such children, whenever appropriate;

(E) supporting high-quality, intensive professional development for all personnel who work with such children in order to ensure that they have the skills and knowledge necessary to enable them—

(i) to meet developmental goals and, to the maximum extent possible, those challenging expectations that have been established for all children; and

(ii) to be prepared to lead productive, independent, adult lives, to the maximum extent possible;

(F) providing incentives for whole-school approaches and pre-referral intervention to reduce the need to label children as disabled in order to address their learning needs; and

(G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results.

(6) While States, local educational agencies, and educational service agencies are responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.

(7)(A) The Federal Government must be responsive to the growing needs of an increasingly more diverse society. A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

(B) America's racial profile is rapidly changing. Between 1980 and 1990, the rate of increase in the population for white Americans was 6 percent, while the rate of increase for racial and ethnic minorities was much higher: 53 percent for Hispanics, 13.2 percent for African-Americans, and 107.8 percent for Asians.

(C) By the year 2000, this Nation will have 275,000,000 people, nearly one of every three of whom will be either African-American, Hispanic, Asian-American, or American Indian.

(D) Taken together as a group, minority children are comprising an ever larger percentage of public school students. Large-city school populations are overwhelmingly minority, for example: for fall 1993, the figure for Miami was 84 percent; Chicago, 89 percent; Philadelphia, 78 percent; Baltimore, 84 percent; Houston, 88 percent; and Los Angeles, 88 percent.

(E) Recruitment efforts within special education must focus on bringing larger numbers of minorities into the profession in order to provide appropriate practitioner knowledge, role models, and sufficient manpower to address the clearly changing demography of special education.

(F) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation. In the Nation's 2 largest school districts, limited English students make up almost half of all students initially entering school at the kindergarten level. Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education. The Department of Education has found that services provided to limited English proficient students often do not respond primarily to the pupil's academic needs. These trends pose special challenges for special education in the referral, assessment, and services for our Nation's students from non-English language backgrounds.

(8)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

(B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

(C) Poor African-American children are 2.3 times more likely to be identified by their teacher as having mental retardation than their white counterpart.

(D) Although African-Americans represent 16 percent of elementary and secondary enrollments, they constitute 21 percent of total enrollments in special education.

(E) The drop-out rate is 68 percent higher for minorities than for whites.

(F) More than 50 percent of minority students in large cities drop out of school.

(9)(A) The opportunity for full participation in awards for grants and contracts, boards of organizations receiving funds under this Act; and peer review panels; and training of professionals in the area of special education by minority individuals, organizations, and historically black colleges and universities is essential if we are to obtain greater success in the education of minority children with disabilities.

(B) In 1993, of the 915,000 college and university professors, 4.9 percent were African-American and 2.4 percent were Hispanic. Of the 2,940,000 teachers, prekindergarten through high school, 6.8 percent were African-American and 4.1 percent were Hispanic.

(C) Students from minority groups comprise more than 50 percent of K–12 public school enrollment in seven States yet minority enrollment in teacher training programs is less than 15 percent in all but six States.

(D) As the number of African-American and Hispanic students in special education increases, the number of minority teachers and related service personnel produced in our colleges and universities continues to decrease.

(E) Ten years ago, 12 percent of the United States teaching force in public elementary and secondary schools were members of a minority group. Minorities comprised 21 percent of the national population at that time and were clearly underrepresented then among employed teachers. Today, the elementary and secondary teaching force is 13 percent minority, while one-third of the students in public schools are minority children.

(F) As recently as 1991, historically black colleges and universities enrolled 44 percent of the African-American teacher trainees in the Nation. However, in 1993, historically black colleges and universities received only 4 percent of the discretionary funds for special education and related services personnel training under this Act.

(G) While African-American students constitute 28 percent of total enrollment in special education, only 11.2 percent of individuals enrolled in preservice training programs for special education are African-American.

(H) In 1986–87, of the degrees conferred in education at the B.A., M.A., and Ph.D levels, only 6, 8, and 8 percent, respectively, were awarded to African-American or Hispanic students.

(10) Minorities and underserved persons are socially disadvantaged because of the lack of opportunities in training and educational programs, undergirded by the practices in the pri-

vate sector that impede their full participation in the mainstream of society.

(d) PURPOSES.—The purposes of this title are—

(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living;

(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

(2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting systemic-change activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

SEC. 602. DEFINITIONS.

Except as otherwise provided, as used in this Act:

(1) ASSISTIVE TECHNOLOGY DEVICE.—The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

(2) ASSISTIVE TECHNOLOGY SERVICE.—The term "assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

(A) the evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment;

(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;

(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(E) training or technical assistance for such child, or, where appropriate, the family of such child; and

(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide serv-

ices to, employ, or are otherwise substantially involved in the major life functions of such child.

(3) CHILD WITH A DISABILITY.—

(A) IN GENERAL.—The term "child with a disability" means a child—

(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.

(B) CHILD AGED 3 THROUGH 9.—The term "child with a disability" for a child aged 3 through 9 may, at the discretion of the State and the local educational agency, include a child—

(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(ii) who, by reason thereof, needs special education and related services.

(4) EDUCATIONAL SERVICE AGENCY.—The term "educational service agency"—

(A) means a regional public multiservice agency—

(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and

(ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State; and

(B) includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.

(5) ELEMENTARY SCHOOL.—The term "elementary school" means a nonprofit institutional day or residential school that provides elementary education, as determined under State law.

(6) EQUIPMENT.—The term "equipment" includes—

(A) machinery, utilities, and built-in equipment and any necessary enclosures or structures to house such machinery, utilities, or equipment; and

(B) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(7) EXCESS COSTS.—The term "excess costs" means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting—

(A) amounts received—

(i) under part B of this title;

(ii) under part A of title I of the Elementary and Secondary Education Act of 1965; or

(iii) under part A of title VII of that Act; and

(B) any State or local funds expended for programs that would qualify for assistance under any of those parts.

(8) FREE APPROPRIATE PUBLIC EDUCATION.—The term "free appropriate public education" means special education and related services that—

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 614(d).

(9) INDIAN.—The term "Indian" means an individual who is a member of an Indian tribe.

(10) INDIAN TRIBE.—The term "Indian tribe" means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act).

(11) INDIVIDUALIZED EDUCATION PROGRAM.—The term "individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 614(d).

(12) INDIVIDUALIZED FAMILY SERVICE PLAN.—The term "individualized family service plan" has the meaning given such term in section 632.

(13) INFANT OR TODDLER WITH A DISABILITY.—The term "infant or toddler with a disability" has the meaning given such term in section 632.

(14) INSTITUTION OF HIGHER EDUCATION.—The term "institution of higher education"—

(A) has the meaning given that term in section 1201(a) of the Higher Education Act of 1965; and

(B) also includes any community college receiving funding from the Secretary of the Interior under the Tribally Controlled Community College Assistance Act of 1978.

(15) LOCAL EDUCATIONAL AGENCY.—

(A) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are

recognized in a State as an administrative agency for its public elementary or secondary schools.

(B) The term includes—

(i) an educational service agency, as defined in paragraph (4); and

(ii) any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(C) The term includes an elementary or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

(16) NATIVE LANGUAGE.—The term "native language", when used with reference to an individual of limited English proficiency, means the language normally used by the individual, or in the case of a child, the language normally used by the parents of the child.

(17) NONPROFIT.—The term "nonprofit", as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(18) OUTLYING AREA.—The term "outlying area" means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(19) PARENT.—The term "parent"—

(A) includes a legal guardian; and

(B) except as used in sections 615(b)(2) and 639(a)(5), includes an individual assigned under either of those sections to be a surrogate parent.

(20) PARENT ORGANIZATION.—The term "parent organization" has the meaning given that term in section 682(g).

(21) PARENT TRAINING AND INFORMATION CENTER.—The term "parent training and information center" means a center assisted under section 682 or 683.

(22) RELATED SERVICES.—The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and in-

cludes the early identification and assessment of disabling conditions in children.

(23) SECONDARY SCHOOL.—The term "secondary school" means a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

(24) SECRETARY.—The term "Secretary" means the Secretary of Education.

(25) SPECIAL EDUCATION.—The term "special education" means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—

(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(B) instruction in physical education.

(26) SPECIFIC LEARNING DISABILITY.—

(A) IN GENERAL.—The term "specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

(B) DISORDERS INCLUDED.—Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(C) DISORDERS NOT INCLUDED.—Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(27) STATE.—The term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

(28) STATE EDUCATIONAL AGENCY.—The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(29) SUPPLEMENTARY AIDS AND SERVICES.—The term "supplementary aids and services" means, aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 612(a)(5).

(30) TRANSITION SERVICES.—The term "transition services" means a coordinated set of activities for a student with a disability that—

(A) are designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(B) are based upon the individual student's needs, taking into account the student's preferences and interests; and

(C) include instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.

(a) ESTABLISHMENT.—There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs, which shall be the principal agency in such Department for administering and carrying out this Act and other programs and activities concerning the education of children with disabilities.

(b) DIRECTOR.—The Office established under subsection (a) shall be headed by a Director who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services.

(c) VOLUNTARY AND UNCOMPENSATED SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Secretary is authorized to accept voluntary and uncompensated services in furtherance of the purposes of this Act.

SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.

(a) IN GENERAL.—A State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act.

(b) REMEDIES.—In a suit against a State for a violation of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in the suit against any public entity other than a State.

(c) EFFECTIVE DATE.—Subsections (a) and (b) apply with respect to violations that occur in whole or part after the date of the enactment of the Education of the Handicapped Act Amendments of 1990.

SEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION OR ALTERATION OF FACILITIES.

(a) IN GENERAL.—If the Secretary determines that a program authorized under this Act would be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary is authorized to allow the use of those funds for those purposes.

(b) COMPLIANCE WITH CERTAIN REGULATIONS.—Any construction of new facilities or alteration of existing facilities under subsection (a) shall comply with the requirements of—

(1) appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the "Americans with Disabilities Accessibility Guidelines for Buildings and Facilities"); or

(2) appendix A of part 101–19.6 of title 41, Code of Federal Regulations (commonly known as the "Uniform Federal Accessibility Standards").

SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.

The Secretary shall ensure that each recipient of assistance under this Act makes positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this Act.

SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULATIONS.

(a) PUBLIC COMMENT PERIOD.—The Secretary shall provide a public comment period of at least 90 days on any regulation proposed under part B or part C of this Act on which an opportunity for public comment is otherwise required by law.

(b) PROTECTIONS PROVIDED TO CHILDREN.—The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this Act that would procedurally or substantively lessen the protections provided to children with disabilities under this Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections relate to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.

(c) POLICY LETTERS AND STATEMENTS.—The Secretary may not, through policy letters or other statements, establish a rule that is required for compliance with, and eligibility under, this part without following the requirements of section 553 of title 5, United States Code.

(d) CORRESPONDENCE FROM DEPARTMENT OF EDUCATION DESCRIBING INTERPRETATIONS OF THIS PART.—

(1) IN GENERAL.—The Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate to interested entities through various additional forms of communication, a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this Act or the regulations implemented pursuant to this Act.

(2) ADDITIONAL INFORMATION.—For each item of correspondence published in a list under paragraph (1), the Secretary shall identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate.

(e) ISSUES OF NATIONAL SIGNIFICANCE.—If the Secretary receives a written request regarding a policy, question, or interpretation under part B of this Act, and determines that it raises an issue of general interest or applicability of national significance to the implementation of part B, the Secretary shall—

(1) include a statement to that effect in any written response;

(2) widely disseminate that response to State educational agencies, local educational agencies, parent and advocacy organizations, and other interested organizations, subject to applicable laws relating to confidentiality of information; and

(3) not later than one year after the date on which the Secretary responds to the written request, issue written guidance on such policy, question, or interpretation through such means as the Secretary determines to be appropriate and consistent

with law, such as a policy memorandum, notice of interpretation, or notice of proposed rulemaking.

(f) Explanation.—Any written response by the Secretary under subsection (e) regarding a policy, question, or interpretation under part B of this Act shall include an explanation that the written response—

(1) is provided as informal guidance and is not legally binding; and

(2) represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.

PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF APPROPRIATIONS.

(a) Grants to States.—

(1) Purpose of grants.—The Secretary shall make grants to States and the outlying areas, and provide funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with this part.

(2) Maximum amounts.—The maximum amount of the grant a State may receive under this section for any fiscal year is—

(A) the number of children with disabilities in the State who are receiving special education and related services—

(i) aged three through five if the State is eligible for a grant under section 619; and

(ii) aged six through 21; multiplied by

(B) 40 percent of the average per-pupil expenditure in public elementary and secondary schools in the United States.

(b) Outlying Areas and Freely Associated States.—

(1) Funds reserved.—From the amount appropriated for any fiscal year under subsection (j), the Secretary shall reserve not more than one percent, which shall be used—

(A) to provide assistance to the outlying areas in accordance with their respective populations of individuals aged three through 21; and

(B) for fiscal years 1998 through 2001, to carry out the competition described in paragraph (2), except that the amount reserved to carry out that competition shall not exceed the amount reserved for fiscal year 1996 for the competition under part B of this Act described under the heading "SPECIAL EDUCATION" in Public Law 104–134.

(2) Limitation for freely associated states.—

(A) Competitive grants.—The Secretary shall use funds described in paragraph (1)(B) to award grants, on a competitive basis, to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated States to carry out the purposes of this part.

(B) Award basis.—The Secretary shall award grants under subparagraph (A) on a competitive basis, pursuant

to the recommendations of the Pacific Region Educational Laboratory in Honolulu, Hawaii. Those recommendations shall be made by experts in the field of special education and related services.

(C) ASSISTANCE REQUIREMENTS.—Any freely associated State that wishes to receive funds under this part shall include, in its application for assistance—

(i) information demonstrating that it will meet all conditions that apply to States under this part;

(ii) an assurance that, notwithstanding any other provision of this part, it will use those funds only for the direct provision of special education and related services to children with disabilities and to enhance its capacity to make a free appropriate public education available to all children with disabilities;

(iii) identify the source and amount of funds, in addition to funds under this part, that it will make available to ensure that a free appropriate public education is available to all children with disabilities within its jurisdiction; and

(iv) such other information and assurances as the Secretary may require.

(D) TERMINATION OF ELIGIBILITY.—Notwithstanding any other provision of law, the freely associated States shall not receive any funds under this part for any program year that begins after September 30, 2001.

(E) ADMINISTRATIVE COSTS.—The Secretary may provide not more than five percent of the amount reserved for grants under this paragraph to pay the administrative costs of the Pacific Region Educational Laboratory under subparagraph (B).

(3) LIMITATION.—An outlying area is not eligible for a competitive award under paragraph (2) unless it receives assistance under paragraph (1)(A).

(4) SPECIAL RULE.—The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, shall not apply to funds provided to those areas or to the freely associated States under this section.

(5) ELIGIBILITY FOR DISCRETIONARY PROGRAMS.—The freely associated States shall be eligible to receive assistance under subpart 2 of part D of this Act until September 30, 2001.

(6) DEFINITION.—As used in this subsection, the term "freely associated States" means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(c) SECRETARY OF THE INTERIOR.—From the amount appropriated for any fiscal year under subsection (j), the Secretary shall reserve 1.226 percent to provide assistance to the Secretary of the Interior in accordance with subsection (i).

(d) ALLOCATIONS TO STATES.—

(1) IN GENERAL.—After reserving funds for studies and evaluations under section 674(e), and for payments to the outlying areas and the Secretary of the Interior under subsections (b) and (c), the Secretary shall allocate the remaining amount

among the States in accordance with paragraph (2) or subsection (e), as the case may be.

(2) INTERIM FORMULA.—Except as provided in subsection (e), the Secretary shall allocate the amount described in paragraph (1) among the States in accordance with section 611(a)(3), (4), and (5) and (b)(1), (2), and (3) of this Act, as in effect prior to the enactment of the Individuals with Disabilities Education Act Amendments of 1997, except that the determination of the number of children with disabilities receiving special education and related services under such section 611(a)(3) may, at the State's discretion, be calculated as of the last Friday in October or as of December 1 of the fiscal year for which the funds are appropriated.

(e) PERMANENT FORMULA.—

(1) ESTABLISHMENT OF BASE YEAR.—The Secretary shall allocate the amount described in subsection (d)(1) among the States in accordance with this subsection for each fiscal year beginning with the first fiscal year for which the amount appropriated under subsection (j) is more than $4,924,672,200.

(2) USE OF BASE YEAR.—

(A) DEFINITION.—As used in this subsection, the term "base year" means the fiscal year preceding the first fiscal year in which this subsection applies.

(B) SPECIAL RULE FOR USE OF BASE YEAR AMOUNT.—If a State received any funds under this section for the base year on the basis of children aged three through five, but does not make a free appropriate public education available to all children with disabilities aged three through five in the State in any subsequent fiscal year, the Secretary shall compute the State's base year amount, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (3) or (4), by subtracting the amount allocated to the State for the base year on the basis of those children.

(3) INCREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) is equal to or greater than the amount allocated to the States under this paragraph for the preceding fiscal year, those allocations shall be calculated as follows:

(A)(i) Except as provided in subparagraph (B), the Secretary shall—

(I) allocate to each State the amount it received for the base year;

(II) allocate 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of a free appropriate public education under this part; and

(III) allocate 15 percent of those remaining funds to States on the basis of their relative populations of children described in subclause (II) who are living in poverty.

(ii) For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(B) Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

(i) No State's allocation shall be less than its allocation for the preceding fiscal year.

(ii) No State's allocation shall be less than the greatest of—

(I) the sum of—

(aa) the amount it received for the base year; and

(bb) one third of one percent of the amount by which the amount appropriated under subsection (j) exceeds the amount appropriated under this section for the base year;

(II) the sum of—

(aa) the amount it received for the preceding fiscal year; and

(bb) that amount multiplied by the percentage by which the increase in the funds appropriated from the preceding fiscal year exceeds 1.5 percent; or

(III) the sum of—

(aa) the amount it received for the preceding fiscal year; and

(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated from the preceding fiscal year.

(iii) Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of—

(I) the amount it received for the preceding fiscal year; and

(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated.

(C) If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

(4) DECREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

(A) If the amount available for allocations is greater than the amount allocated to the States for the base year, each State shall be allocated the sum of—

(i) the amount it received for the base year; and

(ii) an amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over the base year bears to the total of all such increases for all States.

(B)(i) If the amount available for allocations is equal to or less than the amount allocated to the States for the base year, each State shall be allocated the amount it received for the base year.

(ii) If the amount available is insufficient to make the allocations described in clause (i), those allocations shall be ratably reduced.

(f) STATE-LEVEL ACTIVITIES.—

(1) GENERAL.—

(A) Each State may retain not more than the amount described in subparagraph (B) for administration and other State-level activities in accordance with paragraphs (2) and (3).

(B) For each fiscal year, the Secretary shall determine and report to the State educational agency an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

(i) the percentage increase, if any, from the preceding fiscal year in the State's allocation under this section; or

(ii) the rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(C) A State may use funds it retains under subparagraph (A) without regard to—

(i) the prohibition on commingling of funds in section 612(a)(18)(B); and

(ii) the prohibition on supplanting other funds in section 612(a)(18)(C).

(2) STATE ADMINISTRATION.—

(A) For the purpose of administering this part, including section 619 (including the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities)—

(i) each State may use not more than twenty percent of the maximum amount it may retain under paragraph (1)(A) for any fiscal year or $500,000 (adjusted by the cumulative rate of inflation since fiscal year 1998, as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), whichever is greater; and

(ii) each outlying area may use up to five percent of the amount it receives under this section for any fiscal year or $35,000, whichever is greater.

(B) Funds described in subparagraph (A) may also be used for the administration of part C of this Act, if the State educational agency is the lead agency for the State under that part.

(3) OTHER STATE-LEVEL ACTIVITIES.—Each State shall use any funds it retains under paragraph (1) and does not use for administration under paragraph (2) for any of the following:

(A) Support and direct services, including technical assistance and personnel development and training.

(B) Administrative costs of monitoring and complaint investigation, but only to the extent that those costs exceed the costs incurred for those activities during fiscal year 1985.

(C) To establish and implement the mediation process required by section 615(e), including providing for the costs of mediators and support personnel.

(D) To assist local educational agencies in meeting personnel shortages.

(E) To develop a State Improvement Plan under subpart 1 of part D.

(F) Activities at the State and local levels to meet the performance goals established by the State under section 612(a)(16) and to support implementation of the State Improvement Plan under subpart 1 of part D if the State receives funds under that subpart.

(G) To supplement other amounts used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under this section. This system shall be coordinated with and, to the extent appropriate, build on the system of coordinated services developed by the State under part C of this Act.

(H) For subgrants to local educational agencies for the purposes described in paragraph (4)(A).

(4)(A) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES FOR CAPACITY-BUILDING AND IMPROVEMENT.—In any fiscal year in which the percentage increase in the State's allocation under this section exceeds the rate of inflation (as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), each State shall reserve, from its allocation under this section, the amount described in subparagraph (B) to make subgrants to local educational agencies, unless that amount is less than $100,000, to assist them in providing direct services and in making systemic change to improve results for children with disabilities through one or more of the following:

(i) Direct services, including alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools.

(ii) Addressing needs or carrying out improvement strategies identified in the State's Improvement Plan under subpart 1 of part D.

(iii) Adopting promising practices, materials, and technology, based on knowledge derived from education research and other sources.

(iv) Establishing, expanding, or implementing interagency agreements and arrangements between local educational agencies and other agencies or organizations concerning the provision of services to children with disabilities and their families.

(v) Increasing cooperative problem-solving between parents and school personnel and promoting the use of alternative dispute resolution.

(B) MAXIMUM SUBGRANT.—For each fiscal year, the amount referred to in subparagraph (A) is—

(i) the maximum amount the State was allowed to retain under paragraph (1)(A) for the prior fiscal year, or for fiscal year 1998, 25 percent of the State's allocation for fiscal year 1997 under this section; multiplied by

(ii) the difference between the percentage increase in the State's allocation under this section and the rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(5) REPORT ON USE OF FUNDS.—As part of the information required to be submitted to the Secretary under section 612, each State shall annually describe—

(A) how amounts retained under paragraph (1) will be used to meet the requirements of this part;

(B) how those amounts will be allocated among the activities described in paragraphs (2) and (3) to meet State priorities based on input from local educational agencies; and

(C) the percentage of those amounts, if any, that will be distributed to local educational agencies by formula.

(g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute any funds it does not retain under subsection (f) (at least 75 percent of the grant funds) to local educational agencies in the State that have established their eligibility under section 613, and to State agencies that received funds under section 614A(a) of this Act for fiscal year 1997, as then in effect, and have established their eligibility under section 613, for use in accordance with this part.

(2) ALLOCATIONS TO LOCAL EDUCATIONAL AGENCIES.—

(A) INTERIM PROCEDURE.—For each fiscal year for which funds are allocated to States under subsection (d)(2), each State shall allocate funds under paragraph (1) in accordance with section 611(d) of this Act, as in effect prior to the enactment of the Individuals with Disabilities Education Act Amendments of 1997.

(B) PERMANENT PROCEDURE.—For each fiscal year for which funds are allocated to States under subsection (e),

each State shall allocate funds under paragraph (1) as follows:

(i) BASE PAYMENTS.—The State shall first award each agency described in paragraph (1) the amount that agency would have received under this section for the base year, as defined in subsection (e)(2)(A), if the State had distributed 75 percent of its grant for that year under section 611(d), as then in effect.

(ii) ALLOCATION OF REMAINING FUNDS.—After making allocations under clause (i), the State shall—

(I) allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction; and

(II) allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

(3) FORMER CHAPTER 1 STATE AGENCIES.—

(A) To the extent necessary, the State—

(i) shall use funds that are available under subsection (f)(1)(A) to ensure that each State agency that received fiscal year 1994 funds under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 receives, from the combination of funds under subsection (f)(1)(A) and funds provided under paragraph (1) of this subsection, an amount equal to—

(I) the number of children with disabilities, aged 6 through 21, to whom the agency was providing special education and related services on December 1 of the fiscal year for which the funds were appropriated, subject to the limitation in subparagraph (B); multiplied by

(II) the per-child amount provided under such subpart for fiscal year 1994; and

(ii) may use those funds to ensure that each local educational agency that received fiscal year 1994 funds under that subpart for children who had transferred from a State-operated or State-supported school or program assisted under that subpart receives, from the combination of funds available under subsection (f)(1)(A) and funds provided under paragraph (1) of this subsection, an amount for each such child, aged 3 through 21 to whom the agency was providing special education and related services on December 1 of the fiscal year for which the funds were appropriated, equal to the per-child amount the agency received under that subpart for fiscal year 1994.

(B) The number of children counted under subparagraph (A)(i)(I) shall not exceed the number of children aged 3 through 21 for whom the agency received fiscal year 1994

funds under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(4) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that agency with State and local funds, the State educational agency may reallocate any portion of the funds under this part that are not needed by that local agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve.

(h) DEFINITIONS.—For the purpose of this section—

(1) the term "average per-pupil expenditure in public elementary and secondary schools in the United States" means—

(A) without regard to the source of funds—

(i) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the 50 States and the District of Columbia); plus

(ii) any direct expenditures by the State for the operation of those agencies; divided by

(B) the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year; and

(2) the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(i) USE OF AMOUNTS BY SECRETARY OF THE INTERIOR.—

(1) PROVISION OF AMOUNTS FOR ASSISTANCE.—

(A) IN GENERAL.—The Secretary of Education shall provide amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of such payment for any fiscal year shall be equal to 80 percent of the amount allotted under subsection (c) for that fiscal year.

(B) CALCULATION OF NUMBER OF CHILDREN.—In the case of Indian students ages 3 to 5, inclusive, who are enrolled in programs affiliated with Bureau of Indian Affairs (hereafter in this subsection referred to as "BIA") schools and that are required by the States in which such schools are located to attain or maintain State accreditation, and which schools have such accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school shall be allowed to count those children for the purpose of distribution of the funds provided under this paragraph to the Secretary of the Interior. The Secretary of the Interior shall be responsible

for meeting all of the requirements of this part for these children, in accordance with paragraph (2).

(C) ADDITIONAL REQUIREMENT.—With respect to all other children aged 3 to 21, inclusive, on reservations, the State educational agency shall be responsible for ensuring that all of the requirements of this part are implemented.

(2) SUBMISSION OF INFORMATION.—The Secretary of Education may provide the Secretary of the Interior amounts under paragraph (1) for a fiscal year only if the Secretary of the Interior submits to the Secretary of Education information that—

(A) demonstrates that the Department of the Interior meets the appropriate requirements, as determined by the Secretary of Education, of sections 612 (including monitoring and evaluation activities) and 613;

(B) includes a description of how the Secretary of the Interior will coordinate the provision of services under this part with local educational agencies, tribes and tribal organizations, and other private and Federal service providers;

(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures described in subparagraph (A);

(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with section 618;

(E) includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (such agreement shall provide for the apportionment of responsibilities and costs including, but not limited to, child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program); and

(F) includes an assurance that the Department of the Interior will cooperate with the Department of Education in its exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under this part, and will fulfill its duties under this part.

Section 616(a) shall apply to the information described in this paragraph.

(3) PAYMENTS FOR EDUCATION AND SERVICES FOR INDIAN CHILDREN WITH DISABILITIES AGED 3 THROUGH 5.—

(A) IN GENERAL.—With funds appropriated under subsection (j), the Secretary of Education shall make payments to the Secretary of the Interior to be distributed to tribes or

tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of the above to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be equal to 20 percent of the amount allotted under subsection (c).

(B) DISTRIBUTION OF FUNDS.—The Secretary of the Interior shall distribute the total amount of the payment under subparagraph (A) by allocating to each tribe or tribal organization an amount based on the number of children with disabilities ages 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

(C) SUBMISSION OF INFORMATION.—To receive a payment under this paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as required to determine the amounts to be allocated under subparagraph (B). This information shall be compiled and submitted to the Secretary of Education.

(D) USE OF FUNDS.—The funds received by a tribe or tribal organization shall be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(E) BIENNIAL REPORT.—To be eligible to receive a grant pursuant to subparagraph (A), the tribe or tribal organization shall provide to the Secretary of the Interior a biennial report of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the one in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary of Education required under this subsection. The Secretary of Education may require any additional information from the Secretary of the Interior.

(F) PROHIBITIONS.—None of the funds allocated under this paragraph may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

(4) PLAN FOR COORDINATION OF SERVICES.—The Secretary of the Interior shall develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under this Act. Such plan shall provide for the coordination of services benefiting these children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing the plan, the Secretary of the Interior shall consult with all interested and involved parties. It shall be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities. The plan shall also be distributed upon request to States, State and local educational agencies, and other agencies providing services to infants, toddlers, and children with disabilities, to tribes, and to other interested parties.

(5) ESTABLISHMENT OF ADVISORY BOARD.—To meet the requirements of section 612(a)(21), the Secretary of the Interior shall establish, not later than 6 months after the date of the enactment of the Individuals with Disabilities Education Act Amendments of 1997, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 641 in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall—

(A) assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities;

(B) advise and assist the Secretary of the Interior in the performance of the Secretary's responsibilities described in this subsection;

(C) develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;

(D) provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved educational programming for Indian infants, toddlers, and children with disabilities; and

(E) provide assistance in the preparation of information required under paragraph (2)(D).

(6) ANNUAL REPORTS.—

(A) IN GENERAL.—The advisory board established under paragraph (5) shall prepare and submit to the Secretary of the Interior and to the Congress an annual report contain-

ing a description of the activities of the advisory board for the preceding year.

(B) AVAILABILITY.—The Secretary of the Interior shall make available to the Secretary of Education the report described in subparagraph (A).

(j) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this part, other than section 619, there are authorized to be appropriated such sums as may be necessary.

SEC. 612. STATE ELIGIBILITY.

(a) IN GENERAL.—A State is eligible for assistance under this part for a fiscal year if the State demonstrates to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets each of the following conditions:

(1) FREE APPROPRIATE PUBLIC EDUCATION.—

(A) IN GENERAL.—A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

(B) LIMITATION.—The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children:

(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and

(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this part be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility:

(I) were not actually identified as being a child with a disability under section 602(3) of this Act; or

(II) did not have an Individualized Education Program under this part.

(2) FULL EDUCATIONAL OPPORTUNITY GOAL.—The State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.

(3) CHILD FIND.—

(A) IN GENERAL.—All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

(B) CONSTRUCTION.—Nothing in this Act requires that children be classified by their disability so long as each child who has a disability listed in section 602 and who, by reason of that disability, needs special education and re-

lated services is regarded as a child with a disability under this part.

(4) INDIVIDUALIZED EDUCATION PROGRAM.—An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with section 614(d).

(5) LEAST RESTRICTIVE ENVIRONMENT.—

(A) IN GENERAL.—To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(B) ADDITIONAL REQUIREMENT.—

(i) IN GENERAL.—If the State uses a funding mechanism by which the State distributes State funds on the basis of the type of setting in which a child is served, the funding mechanism does not result in placements that violate the requirements of subparagraph (A).

(ii) ASSURANCE.—If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that it will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

(6) PROCEDURAL SAFEGUARDS.—

(A) IN GENERAL.—Children with disabilities and their parents are afforded the procedural safeguards required by section 615.

(B) ADDITIONAL PROCEDURAL SAFEGUARDS.—Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(7) EVALUATION.—Children with disabilities are evaluated in accordance with subsections (a) through (c) of section 614.

(8) CONFIDENTIALITY.—Agencies in the State comply with section 617(c) (relating to the confidentiality of records and information).

(9) TRANSITION FROM PART C TO PRESCHOOL PROGRAMS.—Children participating in early-intervention programs assisted under part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with

section 637(a)(8). By the third birthday of such a child, an individualized education program or, if consistent with sections 614(d)(2)(B) and 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 637(a)(8).

(10) CHILDREN IN PRIVATE SCHOOLS.—

(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.—

(i) IN GENERAL.—To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary and secondary schools, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

(I) Amounts expended for the provision of those services by a local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.

(II) Such services may be provided to children with disabilities on the premises of private, including parochial, schools, to the extent consistent with law.

(ii) CHILD-FIND REQUIREMENT.—The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including parochial, elementary and secondary schools.

(B) CHILDREN PLACED IN, OR REFERRED TO, PRIVATE SCHOOLS BY PUBLIC AGENCIES.—

(i) IN GENERAL.—Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

(ii) STANDARDS.—In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies.

(C) PAYMENT FOR EDUCATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS WITHOUT CONSENT OF OR REFERRAL BY THE PUBLIC AGENCY.—

(i) IN GENERAL.—Subject to subparagraph (A), this part does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

(ii) REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT.—If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

(iii) LIMITATION ON REIMBURSEMENT.—The cost of reimbursement described in clause (ii) may be reduced or denied—

(I) if—

(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in division (aa);

(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(7), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(iv) EXCEPTION.—Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement may

not be reduced or denied for failure to provide such notice if—

(I) the parent is illiterate and cannot write in English;

(II) compliance with clause (iii)(I) would likely result in physical or serious emotional harm to the child;

(III) the school prevented the parent from providing such notice; or

(IV) the parents had not received notice, pursuant to section 615, of the notice requirement in clause (iii)(I).

(11) STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION.—

(A) IN GENERAL.—The State educational agency is responsible for ensuring that—

(i) the requirements of this part are met; and

(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State or local agency—

(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

(II) meet the educational standards of the State educational agency.

(B) LIMITATION.—Subparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the State.

(C) EXCEPTION.—Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

(12) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.—

(A) ESTABLISHING RESPONSIBILITY FOR SERVICES.—The Chief Executive Officer or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

(i) AGENCY FINANCIAL RESPONSIBILITY.—An identification of, or a method for defining, the financial responsibility of each agency for providing services de-

scribed in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State Medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).

(ii) CONDITIONS AND TERMS OF REIMBURSEMENT.—The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

(iii) INTERAGENCY DISPUTES.—Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(iv) COORDINATION OF SERVICES PROCEDURES.—Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

(B) OBLIGATION OF PUBLIC AGENCY.—

(i) IN GENERAL.—If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in sections 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(22) relating to related services, 602(29) relating to supplementary aids and services, and 602(30) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

(ii) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency may then claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency

pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).

(C) SPECIAL RULE.—The requirements of subparagraph (A) may be met through—

(i) State statute or regulation;

(ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer.

(13) PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing.

(14) COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT.—The State has in effect, consistent with the purposes of this Act and with section 635(a)(8), a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel that meets the requirements for a State improvement plan relating to personnel development in subsections (b)(2)(B) and (c)(3)(D) of section 653.

(15) PERSONNEL STANDARDS.—

(A) IN GENERAL.—The State educational agency has established and maintains standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained.

(B) STANDARDS DESCRIBED.—Such standards shall—

(i) be consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;

(ii) to the extent the standards described in subparagraph (A) are not based on the highest requirements in the State applicable to a specific profession or discipline, the State is taking steps to require retraining or hiring of personnel that meet appropriate professional requirements in the State; and

(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities under this part.

(C) POLICY.—In implementing this paragraph, a State may adopt a policy that includes a requirement that local educational agencies in the State make an ongoing good-faith effort to recruit and hire appropriately and ade-

quately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subparagraph (B)(i), consistent with State law, and the steps described in subparagraph (B)(ii) within three years.

(16) PERFORMANCE GOALS AND INDICATORS.—The State—

(A) has established goals for the performance of children with disabilities in the State that—

(i) will promote the purposes of this Act, as stated in section 601(d); and

(ii) are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State;

(B) has established performance indicators the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;

(C) will, every two years, report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A); and

(D) based on its assessment of that progress, will revise its State improvement plan under subpart 1 of part D as may be needed to improve its performance, if the State receives assistance under that subpart.

(17) PARTICIPATION IN ASSESSMENTS.—

(A) IN GENERAL.—Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations, where necessary. As appropriate, the State or local educational agency—

(i) develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs; and

(ii) develops and, beginning not later than July 1, 2000, conducts those alternate assessments.

(B) REPORTS.—The State educational agency makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

(i) The number of children with disabilities participating in regular assessments.

(ii) The number of those children participating in alternate assessments.

(iii)(I) The performance of those children on regular assessments (beginning not later than July 1, 1998) and on alternate assessments (not later than July 1, 2000), if doing so would be statistically sound and

would not result in the disclosure of performance results identifiable to individual children.

(II) Data relating to the performance of children described under subclause (I) shall be disaggregated—

(aa) for assessments conducted after July 1, 1998; and

(bb) for assessments conducted before July 1, 1998, if the State is required to disaggregate such data prior to July 1, 1998.

(18) SUPPLEMENTATION OF STATE, LOCAL, AND OTHER FEDERAL FUNDS.—

(A) EXPENDITURES.—Funds paid to a State under this part will be expended in accordance with all the provisions of this part.

(B) PROHIBITION AGAINST COMMINGLING.—Funds paid to a State under this part will not be commingled with State funds.

(C) PROHIBITION AGAINST SUPPLANTATION AND CONDITIONS FOR WAIVER BY SECRETARY.—Except as provided in section 613, funds paid to a State under this part will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

(19) MAINTENANCE OF STATE FINANCIAL SUPPORT.—

(A) IN GENERAL.—The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(B) REDUCTION OF FUNDS FOR FAILURE TO MAINTAIN SUPPORT.—The Secretary shall reduce the allocation of funds under section 611 for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.

(C) WAIVERS FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES.—The Secretary may waive the requirement of subparagraph (A) for a State, for one fiscal year at a time, if the Secretary determines that—

(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(ii) the State meets the standard in paragraph (18)(C) of this section for a waiver of the requirement

to supplement, and not to supplant, funds received under this part.

(D) SUBSEQUENT YEARS.—If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

(E) REGULATIONS.—

(i) The Secretary shall, by regulation, establish procedures (including objective criteria and consideration of the results of compliance reviews of the State conducted by the Secretary) for determining whether to grant a waiver under subparagraph (C)(ii).

(ii) The Secretary shall publish proposed regulations under clause (i) not later than 6 months after the date of the enactment of the Individuals with Disabilities Education Act Amendments of 1997, and shall issue final regulations under clause (i) not later than 1 year after such date of enactment.

(20) PUBLIC PARTICIPATION.—Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

(21) STATE ADVISORY PANEL.—

(A) IN GENERAL.—The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

(B) MEMBERSHIP.—Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with, the education of children with disabilities, including—

(i) parents of children with disabilities;

(ii) individuals with disabilities;

(iii) teachers;

(iv) representatives of institutions of higher education that prepare special education and related services personnel;

(v) State and local education officials;

(vi) administrators of programs for children with disabilities;

(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

(viii) representatives of private schools and public charter schools;

(ix) at least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and

(x) representatives from the State juvenile and adult corrections agencies.

(C) SPECIAL RULE.—A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities.

(D) DUTIES.—The advisory panel shall—

(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;

(ii) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

(iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 618;

(iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this part; and

(v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.

(22) SUSPENSION AND EXPULSION RATES.—

(A) IN GENERAL.—The State educational agency examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—

(i) among local educational agencies in the State; or

(ii) compared to such rates for nondisabled children within such agencies.

(B) REVIEW AND REVISION OF POLICIES.—If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this Act.

(b) STATE EDUCATIONAL AGENCY AS PROVIDER OF FREE APPROPRIATE PUBLIC EDUCATION OR DIRECT SERVICES.—If the State educational agency provides free appropriate public education to children with disabilities, or provides direct services to such children, such agency—

(1) shall comply with any additional requirements of section 613(a), as if such agency were a local educational agency; and

(2) may use amounts that are otherwise available to such agency under this part to serve those children without regard to section 613(a)(2)(A)(i) (relating to excess costs).

(c) EXCEPTION FOR PRIOR STATE PLANS.—

(1) IN GENERAL.—If a State has on file with the Secretary policies and procedures that demonstrate that such State meets

any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this part.

(2) MODIFICATIONS MADE BY STATE.—Subject to paragraph (3), an application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State deems necessary. This section shall apply to a modification to an application to the same extent and in the same manner as this section applies to the original plan.

(3) MODIFICATIONS REQUIRED BY THE SECRETARY.—If, after the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), or there is a new interpretation of this Act by a Federal or State Supreme court, or there is an official finding of noncompliance with Federal law or regulations, the Secretary may require a State to modify its application only to the extent necessary to ensure the State's compliance with this part.

(d) APPROVAL BY THE SECRETARY.—

(1) IN GENERAL.—If the Secretary determines that a State is eligible to receive a grant under this part, the Secretary shall notify the State of that determination.

(2) NOTICE AND HEARING.—The Secretary shall not make a final determination that a State is not eligible to receive a grant under this part until after providing the State—

(A) with reasonable notice; and

(B) with an opportunity for a hearing.

(e) ASSISTANCE UNDER OTHER FEDERAL PROGRAMS.—Nothing in this title permits a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities in the State.

(f) BY-PASS FOR CHILDREN IN PRIVATE SCHOOLS.—

(1) IN GENERAL.—If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency is prohibited by law from providing for the participation in special programs of children with disabilities enrolled in private elementary and secondary schools as required by subsection (a)(10)(A), the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements which shall be subject to the requirements of such subsection.

(2) PAYMENTS.—

(A) DETERMINATION OF AMOUNTS.—If the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services for a fiscal year an amount per child that does not exceed the amount determined by dividing—

(i) the total amount received by the State under this part for such fiscal year; by

(ii) the number of children with disabilities served in the prior year, as reported to the Secretary by the State under section 618.

(B) WITHHOLDING OF CERTAIN AMOUNTS.—Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates would be necessary to pay the cost of services described in subparagraph (A).

(C) PERIOD OF PAYMENTS.—The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(10)(A).

(3) NOTICE AND HEARING.—

(A) IN GENERAL.—The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why such action should not be taken.

(B) REVIEW OF ACTION.—If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's action, as provided in section 2112 of title 28, United States Code.

(C) REVIEW OF FINDINGS OF FACT.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(D) JURISDICTION OF COURT OF APPEALS; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of a petition under subparagraph (B), the United States court of appeals shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.

(a) IN GENERAL.—A local educational agency is eligible for assistance under this part for a fiscal year if such agency demonstrates to the satisfaction of the State educational agency that it meets each of the following conditions:

(1) CONSISTENCY WITH STATE POLICIES.—The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 612.

(2) USE OF AMOUNTS.—

(A) IN GENERAL.—Amounts provided to the local educational agency under this part shall be expended in accordance with the applicable provisions of this part and—

(i) shall be used only to pay the excess costs of providing special education and related services to children with disabilities;

(ii) shall be used to supplement State, local, and other Federal funds and not to supplant such funds; and

(iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

(B) EXCEPTION.—Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to—

(i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;

(ii) a decrease in the enrollment of children with disabilities;

(iii) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child—

(I) has left the jurisdiction of the agency;

(II) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or

(III) no longer needs such program of special education; or

(iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

(C) TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS.—

(i) Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which amounts appropriated to carry out section 611 exceeds $4,100,000,000, a local educational agency may treat as local funds, for

the purpose of such clauses, up to 20 percent of the amount of funds it receives under this part that exceeds the amount it received under this part for the previous fiscal year.

(ii) Notwithstanding clause (i), if a State educational agency determines that a local educational agency is not meeting the requirements of this part, the State educational agency may prohibit the local educational agency from treating funds received under this part as local funds under clause (i) for any fiscal year, only if it is authorized to so by the State constitution or a State statute.

(D) SCHOOLWIDE PROGRAMS UNDER TITLE I OF THE ESEA.—Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed—

(i) the number of children with disabilities participating in the schoolwide program; multiplied by

(ii)(I) the amount received by the local educational agency under this part for that fiscal year; divided by

(II) the number of children with disabilities in the jurisdiction of that agency.

(3) PERSONNEL DEVELOPMENT.—The local educational agency—

(A) shall ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, consistent with the requirements of section 653(c)(3)(D); and

(B) to the extent such agency determines appropriate, shall contribute to and use the comprehensive system of personnel development of the State established under section 612(a)(14).

(4) PERMISSIVE USE OF FUNDS.—Notwithstanding paragraph (2)(A) or section 612(a)(18)(B) (relating to commingled funds), funds provided to the local educational agency under this part may be used for the following activities:

(A) SERVICES AND AIDS THAT ALSO BENEFIT NONDISABLED CHILDREN.—For the costs of special education and related services and supplementary aids and services provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if one or more nondisabled children benefit from such services.

(B) INTEGRATED AND COORDINATED SERVICES SYSTEM.—To develop and implement a fully integrated and coordinated services system in accordance with subsection (f).

(5) TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS.—In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency—

(A) serves children with disabilities attending those schools in the same manner as it serves children with disabilities in its other schools; and

(B) provides funds under this part to those schools in the same manner as it provides those funds to its other schools.

(6) INFORMATION FOR STATE EDUCATIONAL AGENCY.—The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (16) and (17) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.

(7) PUBLIC INFORMATION.—The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the eligibility of such agency under this part.

(b) EXCEPTION FOR PRIOR LOCAL PLANS.—

(1) IN GENERAL.—If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this part.

(2) MODIFICATION MADE BY LOCAL EDUCATIONAL AGENCY.—Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain in effect until it submits to the State educational agency such modifications as the local educational agency deems necessary.

(3) MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY.—If, after the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), or there is a new interpretation of this Act by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, the State educational agency may require a local educational agency to modify its application only to the extent necessary to ensure the local educational agency's compliance with this part or State law.

(c) NOTIFICATION OF LOCAL EDUCATIONAL AGENCY OR STATE AGENCY IN CASE OF INELIGIBILITY.—If the State educational agency determines that a local educational agency or State agency is not eligible under this section, the State educational agency shall notify the local educational agency or State agency, as the case may be, of that determination and shall provide such local educational agency or State agency with reasonable notice and an opportunity for a hearing.

(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—

(1) IN GENERAL.—If the State educational agency, after reasonable notice and an opportunity for a hearing, finds that a local educational agency or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in subsection (a), the State educational agency shall reduce or shall not provide any further payments to the local educational agency or State agency until the State educational agency is satisfied that the local educational agency or State agency, as the case may be, is complying with that requirement.

(2) ADDITIONAL REQUIREMENT.—Any State agency or local educational agency in receipt of a notice described in paragraph (1) shall, by means of public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

(3) CONSIDERATION.—In carrying out its responsibilities under paragraph (1), the State educational agency shall consider any decision made in a hearing held under section 615 that is adverse to the local educational agency or State agency involved in that decision.

(e) JOINT ESTABLISHMENT OF ELIGIBILITY.—

(1) JOINT ESTABLISHMENT.—

(A) IN GENERAL.—A State educational agency may require a local educational agency to establish its eligibility jointly with another local educational agency if the State educational agency determines that the local educational agency would be ineligible under this section because the local educational agency would not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

(B) CHARTER SCHOOL EXCEPTION.—A State educational agency may not require a charter school that is a local educational agency to jointly establish its eligibility under subparagraph (A) unless it is explicitly permitted to do so under the State's charter school statute.

(2) AMOUNT OF PAYMENTS.—If a State educational agency requires the joint establishment of eligibility under paragraph (1), the total amount of funds made available to the affected local educational agencies shall be equal to the sum of the payments that each such local educational agency would have received under section 611(g) if such agencies were eligible for such payments.

(3) REQUIREMENTS.—Local educational agencies that establish joint eligibility under this subsection shall—

(A) adopt policies and procedures that are consistent with the State's policies and procedures under section 612(a); and

(B) be jointly responsible for implementing programs that receive assistance under this part.

(4) REQUIREMENTS FOR EDUCATIONAL SERVICE AGENCIES.—

(A) IN GENERAL.—If an educational service agency is required by State law to carry out programs under this part, *the joint responsibilities given to local educational agencies under this subsection shall—*

(i) not apply to the administration and disbursement of any payments received by that educational service agency; and

(ii) be carried out only by that educational service agency.

(B) ADDITIONAL REQUIREMENT.—Notwithstanding any other provision of this subsection, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by section 612(a)(5).

(f) COORDINATED SERVICES SYSTEM.—

(1) IN GENERAL.—A local educational agency may not use more than 5 percent of the amount such agency receives under this part for any fiscal year, in combination with other amounts (which shall include amounts other than education funds), to develop and implement a coordinated services system designed to improve results for children and families, including children with disabilities and their families.

(2) ACTIVITIES.—In implementing a coordinated services system under this subsection, a local educational agency may carry out activities that include—

(A) improving the effectiveness and efficiency of service delivery, including developing strategies that promote accountability for results;

(B) service coordination and case management that facilitates the linkage of individualized education programs under this part and individualized family service plans under part C with individualized service plans under multiple Federal and State programs, such as title I of the Rehabilitation Act of 1973 (vocational rehabilitation), title XIX of the Social Security Act (Medicaid), and title XVI of the Social Security Act (supplemental security income);

(C) developing and implementing interagency financing strategies for the provision of education, health, mental health, and social services, including transition services and related services under this Act; and

(D) interagency personnel development for individuals working on coordinated services.

(3) COORDINATION WITH CERTAIN PROJECTS UNDER ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—If a local educational agency is carrying out a coordinated services project under title XI of the Elementary and Secondary Education Act of 1965 and a coordinated services project under this part in the same schools, such agency shall use amounts under this subsection in accordance with the requirements of that title.

(g) SCHOOL-BASED IMPROVEMENT PLAN.—

(1) IN GENERAL.—Each local educational agency may, in accordance with paragraph (2), use funds made available under this part to permit a public school within the jurisdiction of the local educational agency to design, implement, and evaluate a school-based improvement plan that is consistent with the purposes described in section 651(b) and that is designed to im-

prove educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with subparagraphs (A) and (B) of subsection (a)(4) in that public school.

(2) AUTHORITY.—

(A) IN GENERAL.—A State educational agency may grant authority to a local educational agency to permit a public school described in paragraph (1) (through a school-based standing panel established under paragraph (4)(B)) to design, implement, and evaluate a school-based improvement plan described in paragraph (1) for a period not to exceed 3 years.

(B) RESPONSIBILITY OF LOCAL EDUCATIONAL AGENCY.—If a State educational agency grants the authority described in subparagraph (A), a local educational agency that is granted such authority shall have the sole responsibility of oversight of all activities relating to the design, implementation, and evaluation of any school-based improvement plan that a public school is permitted to design under this subsection.

(3) PLAN REQUIREMENTS.—A school-based improvement plan described in paragraph (1) shall—

(A) be designed to be consistent with the purposes described in section 651(b) and to improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with subparagraphs (A) and (B) of subsection (a)(4), who attend the school for which the plan is designed and implemented;

(B) be designed, evaluated, and, as appropriate, implemented by a school-based standing panel established in accordance with paragraph (4)(B);

(C) include goals and measurable indicators to assess the progress of the public school in meeting such goals; and

(D) ensure that all children with disabilities receive the services described in the individualized education programs of such children.

(4) RESPONSIBILITIES OF THE LOCAL EDUCATIONAL AGENCY.—A local educational agency that is granted authority under paragraph (2) to permit a public school to design, implement, and evaluate a school-based improvement plan shall—

(A) select each school under the jurisdiction of such agency that is eligible to design, implement, and evaluate such a plan;

(B) require each school selected under subparagraph (A), in accordance with criteria established by such local educational agency under subparagraph (C), to establish a school-based standing panel to carry out the duties described in paragraph (3)(B);

(C) establish—

(i) criteria that shall be used by such local educational agency in the selection of an eligible school under subparagraph (A);

(ii) criteria that shall be used by a public school selected under subparagraph (A) in the establishment of

a school-based standing panel to carry out the duties described in paragraph (3)(B) and that shall ensure that the membership of such panel reflects the diversity of the community in which the public school is located and includes, at a minimum—

(I) parents of children with disabilities who attend such public school, including parents of children with disabilities from unserved and underserved populations, as appropriate;

(II) special education and general education teachers of such public school;

(III) special education and general education administrators, or the designee of such administrators, of such public school; and

(IV) related services providers who are responsible for providing services to the children with disabilities who attend such public school; and

(iii) criteria that shall be used by such local educational agency with respect to the distribution of funds under this part to carry out this subsection;

(D) disseminate the criteria established under subparagraph (C) to local school district personnel and local parent organizations within the jurisdiction of such local educational agency;

(E) require a public school that desires to design, implement, and evaluate a school-based improvement plan to submit an application at such time, in such manner, and accompanied by such information as such local educational agency shall reasonably require; and

(F) establish procedures for approval by such local educational agency of a school-based improvement plan designed under this subsection.

(5) LIMITATION.—A school-based improvement plan described in paragraph (1) may be submitted to a local educational agency for approval only if a consensus with respect to any matter relating to the design, implementation, or evaluation of the goals of such plan is reached by the school-based standing panel that designed such plan.

(6) ADDITIONAL REQUIREMENTS.—

(A) PARENTAL INVOLVEMENT.—In carrying out the requirements of this subsection, a local educational agency shall ensure that the parents of children with disabilities are involved in the design, evaluation, and, where appropriate, implementation of school-based improvement plans in accordance with this subsection.

(B) PLAN APPROVAL.—A local educational agency may approve a school-based improvement plan of a public school within the jurisdiction of such agency for a period of 3 years, if—

(i) the approval is consistent with the policies, procedures, and practices established by such local educational agency and in accordance with this subsection; and

(ii) a majority of parents of children who are members of the school-based standing panel, and a majority of other members of the school-based standing panel, that designed such plan agree in writing to such plan.

(7) EXTENSION OF PLAN.—If a public school within the jurisdiction of a local educational agency meets the applicable requirements and criteria described in paragraphs (3) and (4) at the expiration of the 3-year approval period described in paragraph (6)(B), such agency may approve a school-based improvement plan of such school for an additional 3-year period.

(h) DIRECT SERVICES BY THE STATE EDUCATIONAL AGENCY.—

(1) IN GENERAL.—A State educational agency shall use the payments that would otherwise have been available to a local educational agency or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local agency, or for whom that State agency is responsible, if the State educational agency determines that the local education agency or State agency, as the case may be—

(A) has not provided the information needed to establish the eligibility of such agency under this section;

(B) is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a);

(C) is unable or unwilling to be consolidated with one or more local educational agencies in order to establish and maintain such programs; or

(D) has one or more children with disabilities who can best be served by a regional or State program or service-delivery system designed to meet the needs of such children.

(2) MANNER AND LOCATION OF EDUCATION AND SERVICES.—The State educational agency may provide special education and related services under paragraph (1) in such manner and at such locations (including regional or State centers) as the State agency considers appropriate. Such education and services shall be provided in accordance with this part.

(i) STATE AGENCY ELIGIBILITY.—Any State agency that desires to receive a subgrant for any fiscal year under section 611(g) shall demonstrate to the satisfaction of the State educational agency that—

(1) all children with disabilities who are participating in programs and projects funded under this part receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

(2) the agency meets such other conditions of this section as the Secretary determines to be appropriate.

(j) DISCIPLINARY INFORMATION.—The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged

in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.

(a) EVALUATIONS AND REEVALUATIONS.—

(1) INITIAL EVALUATIONS.—

(A) IN GENERAL.—A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation, in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

(B) PROCEDURES.—Such initial evaluation shall consist of procedures—

(i) to determine whether a child is a child with a disability (as defined in section 602(3)); and

(ii) to determine the educational needs of such child.

(C) PARENTAL CONSENT.—

(i) IN GENERAL.—The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3)(A) or 602(3)(B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

(ii) REFUSAL.—If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent.

(2) REEVALUATIONS.—A local educational agency shall ensure that a reevaluation of each child with a disability is conducted—

(A) if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years; and

(B) in accordance with subsections (b) and (c).

(b) EVALUATION PROCEDURES.—

(1) NOTICE.—The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.

(2) CONDUCT OF EVALUATION.—In conducting the evaluation, the local educational agency shall—

(A) use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities;

(B) not use any single procedure as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) ADDITIONAL REQUIREMENTS.—Each local educational agency shall ensure that—

(A) tests and other evaluation materials used to assess a child under this section—

(i) are selected and administered so as not to be discriminatory on a racial or cultural basis; and

(ii) are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and

(B) any standardized tests that are given to the child—

(i) have been validated for the specific purpose for which they are used;

(ii) are administered by trained and knowledgeable personnel; and

(iii) are administered in accordance with any instructions provided by the producer of such tests;

(C) the child is assessed in all areas of suspected disability; and

(D) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

(4) DETERMINATION OF ELIGIBILITY.—Upon completion of administration of tests and other evaluation materials—

(A) the determination of whether the child is a child with a disability as defined in section 602(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

(B) a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.

(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION.—In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency.

(c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS.—

(1) REVIEW OF EXISTING EVALUATION DATA.—As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team described in subsection (d)(1)(B) and other qualified professionals, as appropriate, shall—

(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers observation; and

(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

(i) whether the child has a particular category of disability, as described in section 602(3), or, in case of a reevaluation of a child, whether the child continues to have such a disability;

(ii) the present levels of performance and educational needs of the child;

(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum.

(2) SOURCE OF DATA.—The local educational agency shall administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

(3) PARENTAL CONSENT.—Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(C), prior to conducting any reevaluation of a child with a disability, except that such informed parent consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED.—If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency—

(A) shall notify the child's parents of—

(i) that determination and the reasons for it; and

(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability; and

(B) shall not be required to conduct such an assessment unless requested to by the child's parents.

(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY.—A local educational agency shall evaluate a child with a disability in

accordance with this section before determining that the child is no longer a child with a disability.

(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

(1) DEFINITIONS.—As used in this title:

(A) INDIVIDUALIZED EDUCATION PROGRAM.—The term "individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—

(i) a statement of the child's present levels of educational performance, including—

(I) how the child's disability affects the child's involvement and progress in the general curriculum; or

(II) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(ii) a statement of measurable annual goals, including benchmarks or short-term objectives, related to—

(I) meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; and

(II) meeting each of the child's other educational needs that result from the child's disability;

(iii) a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—

(I) to advance appropriately toward attaining the annual goals;

(II) to be involved and progress in the general curriculum in accordance with clause (i) and to participate in extracurricular and other nonacademic activities; and

(III) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph;

(iv) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in clause (iii);

(v)(I) a statement of any individual modifications in the administration of State or districtwide assessments of student achievement that are needed in order for the child to participate in such assessment; and

(II) if the IEP Team determines that the child will not participate in a particular State or districtwide assessment of student achievement (or part of such an assessment), a statement of—

(aa) why that assessment is not appropriate for the child; and

(bb) how the child will be assessed;

(vi) the projected date for the beginning of the services and modifications described in clause (iii), and the anticipated frequency, location, and duration of those services and modifications;

(vii)(I) beginning at age 14, and updated annually, a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced-placement courses or a vocational education program);

(II) beginning at age 16 (or younger, if determined appropriate by the IEP Team), a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages; and

(III) beginning at least one year before the child reaches the age of majority under State law, a statement that the child has been informed of his or her rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m); and

(viii) a statement of—

(I) how the child's progress toward the annual goals described in clause (ii) will be measured; and

(II) how the child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of—

(aa) their child's progress toward the annual goals described in clause (ii); and

(bb) the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

(B) INDIVIDUALIZED EDUCATION PROGRAM TEAM.—The term "individualized education program team" or "IEP Team" means a group of individuals composed of—

(i) the parents of a child with a disability;

(ii) at least one regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

(iii) at least one special education teacher, or where appropriate, at least one special education provider of such child;

(iv) a representative of the local educational agency who—

(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(II) is knowledgeable about the general curriculum; and

(III) is knowledgeable about the availability of resources of the local educational agency;

(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);

(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(vii) whenever appropriate, the child with a disability.

(2) Requirement that program be in effect.—

(A) In general.—At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in its jurisdiction, an individualized education program, as defined in paragraph (1)(A).

(B) Program for child aged 3 through 5.—In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2 year-old child with a disability who will turn age 3 during the school year), an individualized family service plan that contains the material described in section 636, and that is developed in accordance with this section, may serve as the IEP of the child if using that plan as the IEP is—

(i) consistent with State policy; and

(ii) agreed to by the agency and the child's parents.

(3) Development of IEP.—

(A) In general.—In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider—

(i) the strengths of the child and the concerns of the parents for enhancing the education of their child; and

(ii) the results of the initial evaluation or most recent evaluation of the child.

(B) Consideration of special factors.—The IEP Team shall—

(i) in the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;

(ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;

(iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hear-

ing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(v) consider whether the child requires assistive technology devices and services.

(C) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—The regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(iii).

(4) REVIEW AND REVISION OF IEP.—

(A) IN GENERAL.—The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team—

(i) reviews the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and

(ii) revises the IEP as appropriate to address—

(I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;

(II) the results of any reevaluation conducted under this section;

(III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);

(IV) the child's anticipated needs; or

(V) other matters.

(B) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—The regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the review and revision of the IEP of the child.

(5) FAILURE TO MEET TRANSITION OBJECTIVES.—If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(vii), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in that program.

(6) CHILDREN WITH DISABILITIES IN ADULT PRISONS.—

(A) IN GENERAL.—The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

(i) The requirements contained in section 612(a)(17) and paragraph (1)(A)(v) of this subsection (relating to participation of children with disabilities in general assessments).

(ii) The requirements of subclauses (I) and (II) of paragraph (1)(A)(vii) of this subsection (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of their age, before they will be released from prison.

(B) ADDITIONAL REQUIREMENT.—If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP team may modify the child's IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) and 614(d)(1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(e) CONSTRUCTION.—Nothing in this section shall be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component of such IEP.

(f) EDUCATIONAL PLACEMENTS.—Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

SEC. 615. PROCEDURAL SAFEGUARDS.

(a) ESTABLISHMENT OF PROCEDURES.—Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies.

(b) TYPES OF PROCEDURES.—The procedures required by this section shall include—

(1) an opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

(2) procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents;

(3) written prior notice to the parents of the child whenever such agency—

(A) proposes to initiate or change; or

(B) refuses to initiate or change;

the identification, evaluation, or educational placement of the child, in accordance with subsection (c), or the provision of a free appropriate public education to the child;

(4) procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so;

(5) an opportunity for mediation in accordance with subsection (e);

(6) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child;

(7) procedures that require the parent of a child with a disability, or the attorney representing the child, to provide notice (which shall remain confidential)—

(A) to the State educational agency or local educational agency, as the case may be, in the complaint filed under paragraph (6); and

(B) that shall include—

(i) the name of the child, the address of the residence of the child, and the name of the school the child is attending;

(ii) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

(iii) a proposed resolution of the problem to the extent known and available to the parents at the time; and

(8) procedures that require the State educational agency to develop a model form to assist parents in filing a complaint in accordance with paragraph (7).

(c) CONTENT OF PRIOR WRITTEN NOTICE.—The notice required by subsection (b)(3) shall include—

(1) a description of the action proposed or refused by the agency;

(2) an explanation of why the agency proposes or refuses to take the action;

(3) a description of any other options that the agency considered and the reasons why those options were rejected;

(4) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;

(5) a description of any other factors that are relevant to the agency's proposal or refusal;

(6) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

(7) sources for parents to contact to obtain assistance in understanding the provisions of this part.

(d) PROCEDURAL SAFEGUARDS NOTICE.—

(1) IN GENERAL.—A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents, at a minimum—

(A) upon initial referral for evaluation;

(B) upon each notification of an individualized education program meeting and upon reevaluation of the child; and

(C) upon registration of a complaint under subsection (b)(6).

(2) CONTENTS.—The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to—

(A) independent educational evaluation;

(B) prior written notice;

(C) parental consent;

(D) access to educational records;

(E) opportunity to present complaints;

(F) the child's placement during pendency of due process proceedings;

(G) procedures for students who are subject to placement in an interim alternative educational setting;

(H) requirements for unilateral placement by parents of children in private schools at public expense;

(I) mediation;

(J) due process hearings, including requirements for disclosure of evaluation results and recommendations;

(K) State-level appeals (if applicable in that State);

(L) civil actions; and

(M) attorneys' fees.

(e) MEDIATION.—

(1) IN GENERAL.—Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in subsection (b)(6) to resolve such disputes through a mediation process which, at a minimum, shall be available whenever a hearing is requested under subsection (f) or (k).

(2) REQUIREMENTS.—Such procedures shall meet the following requirements:

(A) The procedures shall ensure that the mediation process—

(i) is voluntary on the part of the parties;

(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and

(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(B) A local educational agency or a State agency may establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—

(i) a parent training and information center or community parent resource center in the State established under section 682 or 683; or

(ii) an appropriate alternative dispute resolution entity;

to encourage the use, and explain the benefits, of the mediation process to the parents.

(C) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(D) The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

(E) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(F) An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.

(G) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

(f) IMPARTIAL DUE PROCESS HEARING.—

(1) IN GENERAL.—Whenever a complaint has been received under subsection (b)(6) or (k) of this section, the parents involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS.—

(A) IN GENERAL.—At least 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(B) FAILURE TO DISCLOSE.—A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) LIMITATION ON CONDUCT OF HEARING.—A hearing conducted pursuant to paragraph (1) may not be conducted by an employee of the State educational agency or the local educational agency involved in the education or care of the child.

(g) APPEAL.—If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency. Such agency shall conduct an impartial review of such decision. The officer conducting such review shall make an independent decision upon completion of such review.

(h) SAFEGUARDS.—Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—

(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

(4) the right to written, or, at the option of the parents, electronic findings of fact and decisions (which findings and decisions shall be made available to the public consistent with the requirements of section 617(c) (relating to the confidentiality of data, information, and records) and shall also be transmitted to the advisory panel established pursuant to section 612(a)(21)).

(i) ADMINISTRATIVE PROCEDURES.—

(1) IN GENERAL.—

(A) DECISION MADE IN HEARING.—A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2) of this subsection.

(B) DECISION MADE AT APPEAL.—A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2) of this subsection.

(2) RIGHT TO BRING CIVIL ACTION.—

(A) IN GENERAL.—Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(B) ADDITIONAL REQUIREMENTS.—In any action brought under this paragraph, the court—

(i) shall receive the records of the administrative proceedings;

(ii) shall hear additional evidence at the request of a party; and

(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) JURISDICTION OF DISTRICT COURTS; ATTORNEYS' FEES.—

(A) IN GENERAL.—The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

(B) AWARD OF ATTORNEYS' FEES.—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

(C) DETERMINATION OF AMOUNT OF ATTORNEYS' FEES.—Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished.

No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(D) PROHIBITION OF ATTORNEYS' FEES AND RELATED COSTS FOR CERTAIN SERVICES.—

(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—

(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

(II) the offer is not accepted within 10 days; and

(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e) that is conducted prior to the filing of a complaint under subsection (b)(6) or (k) of this section.

(E) EXCEPTION TO PROHIBITION ON ATTORNEYS' FEES AND RELATED COSTS.—Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—Except as provided in subparagraph (G), whenever the court finds that—

(i) the parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) the attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with subsection (b)(7);

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State

or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

(j) MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT.—Except as provided in subsection (k)(7), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.—

(1) AUTHORITY OF SCHOOL PERSONNEL.—

(A) School personnel under this section may order a change in the placement of a child with a disability—

(i) to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities); and

(ii) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if—

(I) the child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or

(II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

(B) Either before or not later than 10 days after taking a disciplinary action described in subparagraph (A)—

(i) if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension described in subparagraph (A), the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or

(ii) if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior.

(2) AUTHORITY OF HEARING OFFICER.—A hearing officer under this section may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer—

(A) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;

(B) considers the appropriateness of the child's current placement;

(C) considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

(D) determines that the interim alternative educational setting meets the requirements of paragraph (3)(B).

(3) DETERMINATION OF SETTING.—

(A) IN GENERAL.—The alternative educational setting described in paragraph (1)(A)(ii) shall be determined by the IEP Team.

(B) ADDITIONAL REQUIREMENTS.—Any interim alternative educational setting in which a child is placed under paragraph (1) or (2) shall—

(i) be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and

(ii) include services and modifications designed to address the behavior described in paragraph (1) or paragraph (2) so that it does not recur.

(4) MANIFESTATION DETERMINATION REVIEW.—

(A) IN GENERAL.—If a disciplinary action is contemplated as described in paragraph (1) or paragraph (2) for a behavior of a child with a disability described in either of those paragraphs, or if a disciplinary action involving a change of placement for more than 10 days is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the local educational agency that applies to all children—

(i) not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under this section; and

(ii) immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

(B) INDIVIDUALS TO CARRY OUT REVIEW.—A review described in subparagraph (A) shall be conducted by the IEP Team and other qualified personnel.

(C) CONDUCT OF REVIEW.—In carrying out a review described in subparagraph (A), the IEP Team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team—

(i) first considers, in terms of the behavior subject to disciplinary action, all relevant information, including—

(I) evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child;

(II) observations of the child; and

(III) the child's IEP and placement; and

(ii) then determines that—

(I) in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

(II) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

(III) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

(5) DETERMINATION THAT BEHAVIOR WAS NOT MANIFESTATION OF DISABILITY.—

(A) IN GENERAL.—If the result of the review described in paragraph (4) is a determination, consistent with paragraph (4)(C), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in section 612(a)(1).

(B) ADDITIONAL REQUIREMENT.—If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(6) PARENT APPEAL.—

(A) IN GENERAL.—

(i) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.

(ii) The State or local educational agency shall arrange for an expedited hearing in any case described in this subsection when requested by a parent.

(B) REVIEW OF DECISION.—

(i) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of such child's disability consistent with the requirements of paragraph (4)(C).

(ii) In reviewing a decision under paragraph (1)(A)(ii) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards set out in paragraph (2).

(7) PLACEMENT DURING APPEALS.—

(A) IN GENERAL.—When a parent requests a hearing regarding a disciplinary action described in paragraph

(1)(A)(ii) or paragraph (2) to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(A)(ii) or paragraph (2), whichever occurs first, unless the parent and the State or local educational agency agree otherwise.

(B) CURRENT PLACEMENT.—If a child is placed in an interim alternative educational setting pursuant to paragraph (1)(A)(ii) or paragraph (2) and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in subparagraph (C).

(C) EXPEDITED HEARING.—

(i) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the local educational agency may request an expedited hearing.

(ii) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards set out in paragraph (2).

(8) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.—

(A) IN GENERAL.—A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in paragraph (1), may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(B) BASIS OF KNOWLEDGE.—A local educational agency shall be deemed to have knowledge that a child is a child with a disability if—

(i) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services;

(ii) the behavior or performance of the child demonstrates the need for such services;

(iii) the parent of the child has requested an evaluation of the child pursuant to section 614; or

(iv) the teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of such agency or to other personnel of the agency.

(C) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.—

(i) IN GENERAL.—If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B)) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

(ii) LIMITATIONS.—If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1) or (2), the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

(9) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES.—

(A) Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(B) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(10) DEFINITIONS.—For purposes of this subsection, the following definitions apply:

(A) CONTROLLED SUBSTANCE.—The term "controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(B) ILLEGAL DRUG.—The term "illegal drug"—

(i) means a controlled substance; but

(ii) does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or

used under any other authority under that Act or under any other provision of Federal law.

(C) Substantial evidence.—The term "substantial evidence" means beyond a preponderance of the evidence.

(D) Weapon.—The term "weapon" has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

(l) Rule of Construction.—Nothing in this part shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

(m) Transfer of Parental Rights at Age of Majority.—

(1) In general.—A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

(A) the public agency shall provide any notice required by this section to both the individual and the parents;

(B) all other rights accorded to parents under this part transfer to the child;

(C) the agency shall notify the individual and the parents of the transfer of rights; and

(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

(2) Special rule.—If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

SEC. 616. WITHHOLDING AND JUDICIAL REVIEW.

(a) Withholding of Payments.—

(1) In general.—Whenever the Secretary, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or State agency affected by any failure described in subparagraph (B)), finds—

(A) that there has been a failure by the State to comply substantially with any provision of this part; or

(B) that there is a failure to comply with any condition of a local educational agency's or State agency's eligibility under this part, including the terms of any agreement to

achieve compliance with this part within the timelines specified in the agreement;

the Secretary shall, after notifying the State educational agency, withhold, in whole or in part, any further payments to the State under this part, or refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(2) NATURE OF WITHHOLDING.—If the Secretary withholds further payments under paragraph (1), the Secretary may determine that such withholding will be limited to programs or projects, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or State agencies affected by the failure. Until the Secretary is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in subparagraph (A) or (B) of paragraph (1), payments to the State under this part shall be withheld in whole or in part, or payments by the State educational agency under this part shall be limited to local educational agencies and State agencies whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, State agency, or local educational agency that has received notice under paragraph (1) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

(b) JUDICIAL REVIEW.—

(1) IN GENERAL.—If any State is dissatisfied with the Secretary's final action with respect to the eligibility of the State under section 612, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

(2) JURISDICTION; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(3) STANDARD OF REVIEW.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) DIVIDED STATE AGENCY RESPONSIBILITY.—For purposes of this section, where responsibility for ensuring that the requirements of

this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the State educational agency pursuant to section 612(a)(11)(C), the Secretary, in instances where the Secretary finds that the failure to comply substantially with the provisions of this part are related to a failure by the public agency, shall take appropriate corrective action to ensure compliance with this part, except—

(1) any reduction or withholding of payments to the State is proportionate to the total funds allotted under section 611 to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

(2) any withholding of funds under paragraph (1) shall be limited to the specific agency responsible for the failure to comply with this part.

SEC. 617. ADMINISTRATION.

(a) RESPONSIBILITIES OF SECRETARY.—In carrying out this part, the Secretary shall—

(1) cooperate with, and (directly or by grant or contract) furnish technical assistance necessary to, the State in matters relating to—

(A) the education of children with disabilities; and

(B) carrying out this part; and

(2) provide short-term training programs and institutes.

(b) RULES AND REGULATIONS.—In carrying out the provisions of this part, the Secretary shall issue regulations under this Act only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this Act.

(c) CONFIDENTIALITY.—The Secretary shall take appropriate action, in accordance with the provisions of section 444 of the General Education Provisions Act (20 U.S.C. 1232g), to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant to the provisions of this part.

(d) PERSONNEL.—The Secretary is authorized to hire qualified personnel necessary to carry out the Secretary's duties under subsection (a) and under sections 618, 661 and 673 (or their predecessor authorities through October 1, 1997) without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, except that no more than twenty such personnel shall be employed at any time.

SEC. 618. PROGRAM INFORMATION.

(a) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year to the Secretary—

(1)(A) on—

(i) the number of children with disabilities, by race, ethnicity, and disability category, who are receiving a free appropriate public education;

(ii) the number of children with disabilities, by race and ethnicity, who are receiving early intervention services;

(iii) the number of children with disabilities, by race, ethnicity, and disability category, who are participating in regular education;

(iv) the number of children with disabilities, by race, ethnicity, and disability category, who are in separate classes, separate schools or facilities, or public or private residential facilities;

(v) the number of children with disabilities, by race, ethnicity, and disability category, who, for each year of age from age 14 to 21, stopped receiving special education and related services because of program completion or other reasons and the reasons why those children stopped receiving special education and related services;

(vi) the number of children with disabilities, by race and ethnicity, who, from birth through age two, stopped receiving early intervention services because of program completion or for other reasons; and

(vii)(I) the number of children with disabilities, by race, ethnicity, and disability category, who under subparagraphs (A)(ii) and (B) of section 615(k)(1), are removed to an interim alternative educational setting;

(II) the acts or items precipitating those removals; and

(III) the number of children with disabilities who are subject to long-term suspensions or expulsions; and

(B) on the number of infants and toddlers, by race and ethnicity, who are at risk of having substantial developmental delays (as described in section 632), and who are receiving early intervention services under part C; and

(2) on any other information that may be required by the Secretary.

(b) SAMPLING.—The Secretary may permit States and the Secretary of the Interior to obtain the data described in subsection (a) through sampling.

(c) DISPROPORTIONALITY.—

(1) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the State with respect to—

(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3); and

(B) the placement in particular educational settings of such children.

(2) REVIEW AND REVISION OF POLICIES, PRACTICES, AND PROCEDURES.—In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular

educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this Act.

SEC. 619. PRESCHOOL GRANTS.

(a) IN GENERAL.—The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this part—

(1) to children with disabilities aged 3 to 5, inclusive; and

(2) at the State's discretion, to 2-year-old children with disabilities who will turn 3 during the school year.

(b) ELIGIBILITY.—A State shall be eligible for a grant under this section if such State—

(1) is eligible under section 612 to receive a grant under this part; and

(2) makes a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in the State.

(c) ALLOCATIONS TO STATES.—

(1) IN GENERAL.—After reserving funds for studies and evaluations under section 674(e), the Secretary shall allocate the remaining amount among the States in accordance with paragraph (2) or (3), as the case may be.

(2) INCREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) is equal to or greater than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

(A)(i) Except as provided in subparagraph (B), the Secretary shall—

(I) allocate to each State the amount it received for fiscal year 1997;

(II) allocate 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 5; and

(III) allocate 15 percent of those remaining funds to States on the basis of their relative populations of all children aged 3 through 5 who are living in poverty.

(ii) For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(B) Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

(i) No State's allocation shall be less than its allocation for the preceding fiscal year.

(ii) No State's allocation shall be less than the greatest of—

(I) the sum of—

(aa) the amount it received for fiscal year 1997; and

(bb) one third of one percent of the amount by which the amount appropriated under subsection (j) exceeds the amount appropriated under this section for fiscal year 1997;

(II) the sum of—

(aa) the amount it received for the preceding fiscal year; and

(bb) that amount multiplied by the percentage by which the increase in the funds appropriated from the preceding fiscal year exceeds 1.5 percent; or

(III) the sum of—

(aa) the amount it received for the preceding fiscal year; and

(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated from the preceding fiscal year.

(iii) Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of—

(I) the amount it received for the preceding fiscal year; and

(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated.

(C) If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

(3) DECREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

(A) If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State shall be allocated the sum of—

(i) the amount it received for fiscal year 1997; and

(ii) an amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.

(B) If the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State shall be allocated the amount it received for that year, ratably reduced, if necessary.

(4) OUTLYING AREAS.—The Secretary shall increase the fiscal year 1998 allotment of each outlying area under section 611 by at least the amount that that area received under this section for fiscal year 1997.

(d) RESERVATION FOR STATE ACTIVITIES.—

(1) IN GENERAL.—Each State may retain not more than the amount described in paragraph (2) for administration and other State-level activities in accordance with subsections (e) and (f).

(2) AMOUNT DESCRIBED.—For each fiscal year, the Secretary shall determine and report to the State educational agency an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

(A) the percentage increase, if any, from the preceding fiscal year in the State's allocation under this section; or

(B) the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(e) STATE ADMINISTRATION.—

(1) IN GENERAL.—For the purpose of administering this section (including the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities) a State may use not more than 20 percent of the maximum amount it may retain under subsection (d) for any fiscal year.

(2) ADMINISTRATION OF PART C.—Funds described in paragraph (1) may also be used for the administration of part C of this Act, if the State educational agency is the lead agency for the State under that part.

(f) OTHER STATE-LEVEL ACTIVITIES.—Each State shall use any funds it retains under subsection (d) and does not use for administration under subsection (e)—

(1) for support services (including establishing and implementing the mediation process required by section 615(e)), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5;

(2) for direct services for children eligible for services under this section;

(3) to develop a State improvement plan under subpart 1 of part D;

(4) for activities at the State and local levels to meet the performance goals established by the State under section 612(a)(16) and to support implementation of the State improvement plan under subpart 1 of part D if the State receives funds under that subpart; or

(5) to supplement other funds used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under this section for a fiscal year.

(g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute any of the grant funds that it does not reserve under subsection (d) to local educational agencies in the State that have established their eligibility under section 613, as follows:

(A) BASE PAYMENTS.—The State shall first award each agency described in paragraph (1) the amount that agency would have received under this section for fiscal year 1997

if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as then in effect.

(B) ALLOCATION OF REMAINING FUNDS.—After making allocations under subparagraph (A), the State shall—

(i) allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction; and

(ii) allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

(2) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities aged three through five residing in the area served by that agency with State and local funds, the State educational agency may reallocate any portion of the funds under this section that are not needed by that local agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged three through five residing in the areas they serve.

(h) PART C INAPPLICABLE.—Part C of this Act does not apply to any child with a disability receiving a free appropriate public education, in accordance with this part, with funds received under this section.

(i) DEFINITION.—For the purpose of this section, the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(j) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated to the Secretary $500,000,000 for fiscal year 1998 and such sums as may be necessary for each subsequent fiscal year.

PART C—INFANTS AND TODDLERS WITH DISABILITIES

SEC. 631. FINDINGS AND POLICY.

(a) FINDINGS.—The Congress finds that there is an urgent and substantial need—

(1) to enhance the development of infants and toddlers with disabilities and to minimize their potential for developmental delay;

(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

(3) to minimize the likelihood of institutionalization of individuals with disabilities and maximize the potential for their independently living in society;

(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and

(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of historically underrepresented populations, particularly minority, low-income, inner-city, and rural populations.

(b) POLICY.—It is therefore the policy of the United States to provide financial assistance to States—

(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;

(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

(3) to enhance their capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

SEC. 632. DEFINITIONS.

As used in this part:

(1) AT-RISK INFANT OR TODDLER.—The term "at-risk infant or toddler" means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

(2) COUNCIL.—The term "council" means a State interagency coordinating council established under section 641.

(3) DEVELOPMENTAL DELAY.—The term "developmental delay", when used with respect to an individual residing in a State, has the meaning given such term by the State under section 635(a)(1).

(4) EARLY INTERVENTION SERVICES.—The term "early intervention services" means developmental services that—

(A) are provided under public supervision;

(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

(C) are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas—

(i) physical development;

(ii) cognitive development;

(iii) communication development;

(iv) social or emotional development; or

(v) adaptive development;

(D) meet the standards of the State in which they are provided, including the requirements of this part;

(E) include—

(i) family training, counseling, and home visits;

(ii) special instruction;

(iii) speech-language pathology and audiology services;

(iv) occupational therapy;

(v) physical therapy;

(vi) psychological services;

(vii) service coordination services;

(viii) medical services only for diagnostic or evaluation purposes;

(ix) early identification, screening, and assessment services;

(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;

(xi) social work services;

(xii) vision services;

(xiii) assistive technology devices and assistive technology services; and

(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;

(F) are provided by qualified personnel, including—

(i) special educators;

(ii) speech-language pathologists and audiologists;

(iii) occupational therapists;

(iv) physical therapists;

(v) psychologists;

(vi) social workers;

(vii) nurses;

(viii) nutritionists;

(ix) family therapists;

(x) orientation and mobility specialists; and

(xi) pediatricians and other physicians;

(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and

(H) are provided in conformity with an individualized family service plan adopted in accordance with section 636.

(5) INFANT OR TODDLER WITH A DISABILITY.—The term "infant or toddler with a disability"—

(A) means an individual under 3 years of age who needs early intervention services because the individual—

(i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

(ii) has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; and

(B) may also include, at a State's discretion, at-risk infants and toddlers.

SEC. 633. GENERAL AUTHORITY.

The Secretary shall, in accordance with this part, make grants to States (from their allocations under section 643) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

SEC. 634. ELIGIBILITY.

In order to be eligible for a grant under section 633, a State shall demonstrate to the Secretary that the State—

(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; and

(2) has in effect a statewide system that meets the requirements of section 635.

SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.

(a) IN GENERAL.—A statewide system described in section 633 shall include, at a minimum, the following components:

(1) A definition of the term "developmental delay" that will be used by the State in carrying out programs under this part.

(2) A State policy that is in effect and that ensures that appropriate early intervention services are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers and their families residing on a reservation geographically located in the State.

(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to appropriately assist in the development of the infant or toddler.

(4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 636, including service coordination services in accordance with such service plan.

(5) A comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources.

(6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information for parents on the availability of early intervention services, and procedures for determining the extent to which such sources disseminate such information to parents of infants and toddlers.

(7) A central directory which includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.

(8) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources respecting the basic components of early intervention services available in the State, that is consistent with the comprehensive system of personnel development described in section 612(a)(14) and may include—

(A) implementing innovative strategies and activities for the recruitment and retention of early education service providers;

(B) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part;

(C) training personnel to work in rural and inner-city areas; and

(D) training personnel to coordinate transition services for infants and toddlers served under this part from an early intervention program under this part to preschool or other appropriate services.

(9) Subject to subsection (b), policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including—

(A) the establishment and maintenance of standards which are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing early intervention services; and

(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State;

except that nothing in this part, including this paragraph, prohibits the use of paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, to assist in the provision of early intervention services to infants and toddlers with disabilities under this part.

(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—

(A) the general administration and supervision of programs and activities receiving assistance under section 633, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 633, to ensure that the State complies with this part;

(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;

(C) the assignment of financial responsibility in accordance with section 637(a)(2) to the appropriate agencies;

(D) the development of procedures to ensure that services are provided to infants and toddlers and their families

under this part in a timely manner pending the resolution of any disputes among public agencies or service providers;

(E) the resolution of intra- and interagency disputes; and

(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements.

(12) A procedure for securing timely reimbursements of funds used under this part in accordance with section 640(a).

(13) Procedural safeguards with respect to programs under this part, as required by section 639.

(14) A system for compiling data requested by the Secretary under section 618 that relates to this part.

(15) A State interagency coordinating council that meets the requirements of section 641.

(16) Policies and procedures to ensure that, consistent with section 636(d)(5)—

(A) to the maximum extent appropriate, early intervention services are provided in natural environments; and

(B) the provision of early intervention services for any infant or toddler occurs in a setting other than a natural environment only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

(b) POLICY.—In implementing subsection (a)(9), a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subsection (a)(9) within 3 years.

SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.

(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—A statewide system described in section 633 shall provide, at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive—

(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;

(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and

(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e).

(b) PERIODIC REVIEW.—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

(c) PROMPTNESS AFTER ASSESSMENT.—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.

(d) CONTENT OF PLAN.—The individualized family service plan shall be in writing and contain—

(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

(3) a statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary;

(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;

(5) a statement of the natural environments in which early intervention services shall appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

(6) the projected dates for initiation of services and the anticipated duration of the services;

(7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons; and

(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

(e) PARENTAL CONSENT.—The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then the early intervention services to which consent is obtained shall be provided.

SEC. 637. STATE APPLICATION AND ASSURANCES.

(a) Application.—A State desiring to receive a grant under section 633 shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain—

(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 633;

(2) a designation of an individual or entity responsible for assigning financial responsibility among appropriate agencies;

(3) information demonstrating eligibility of the State under section 634, including—

(A) information demonstrating to the Secretary's satisfaction that the State has in effect the statewide system required by section 633; and

(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;

(4) if the State provides services to at-risk infants and toddlers through the system, a description of such services;

(5) a description of the uses for which funds will be expended in accordance with this part;

(6) a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State;

(7) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

(8) a description of the policies and procedures to be used—

(A) to ensure a smooth transition for toddlers receiving early intervention services under this part to preschool or other appropriate services, including a description of how—

(i) the families of such toddlers will be included in the transition plans required by subparagraph (C); and

(ii) the lead agency designated or established under section 636(a)(10) will—

(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under part B, as determined in accordance with State law;

(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency at least 90 days (and at the discretion of all such parties, up to 6 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

(III) in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under part B, to discuss the appropriate services that the child may receive;

(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and

(C) to establish a transition plan; and

(9) such other information and assurances as the Secretary may reasonably require.

(b) ASSURANCES.—The application described in subsection (a)—

(1) shall provide satisfactory assurance that Federal funds made available under section 643 to the State will be expended in accordance with this part;

(2) shall contain an assurance that the State will comply with the requirements of section 640;

(3) shall provide satisfactory assurance that the control of funds provided under section 643, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property;

(4) shall provide for—

(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part; and

(B) keeping such records and affording such access to them as the Secretary may find necessary to ensure the correctness and verification of those reports and proper disbursement of Federal funds under this part;

(5) provide satisfactory assurance that Federal funds made available under section 643 to the State—

(A) will not be commingled with State funds; and

(B) will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;

(6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under section 643 to the State;

(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, and rural families, in the planning and implementation of all the requirements of this part; and

(8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.

(c) STANDARD FOR DISAPPROVAL OF APPLICATION.—The Secretary may not disapprove such an application unless the Secretary deter-

mines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

(d) SUBSEQUENT STATE APPLICATION.—If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under part H (as in effect before July 1, 1998), the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this part.

(e) MODIFICATION OF APPLICATION.—An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

(f) MODIFICATIONS REQUIRED BY THE SECRETARY.—The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure the State's compliance with this part, if—

(1) an amendment is made to this Act, or a Federal regulation issued under this Act;

(2) a new interpretation of this Act is made by a Federal court or the State's highest court; or

(3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.

SEC. 638. USES OF FUNDS.

In addition to using funds provided under section 633 to maintain and implement the statewide system required by such section, a State may use such funds—

(1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this part that are not otherwise funded through other public or private sources;

(2) to expand and improve on services for infants and toddlers and their families under this part that are otherwise available;

(3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year; and

(4) in any State that does not provide services for at-risk infants and toddlers under section 637(a)(4), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purposes of—

(A) identifying and evaluating at-risk infants and toddlers;

(B) making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and

(C) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

SEC. 639. PROCEDURAL SAFEGUARDS.

(a) MINIMUM PROCEDURES.—The procedural safeguards required to be included in a statewide system under section 635(a)(13) shall provide, at a minimum, the following:

(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

(3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.

(4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

(5) Procedures to protect the rights of the infant or toddler whenever the parents of the child are not known or cannot be found or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.

(6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.

(7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

(8) The right of parents to use mediation in accordance with section 615(e), except that—

(A) any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

(B) any reference in the section to a local educational agency shall be considered to be a reference to a local serv-

ice provider or the State's lead agency under this part, as the case may be; and

(C) any reference in the section to the provision of free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

(b) SERVICES DURING PENDENCY OF PROCEEDINGS.—During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

SEC. 640. PAYOR OF LAST RESORT.

(a) NONSUBSTITUTION.—Funds provided under section 643 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 643 may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.

(b) REDUCTION OF OTHER BENEFITS—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to medicaid for infants or toddlers with disabilities) within the State.

SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—A State that desires to receive financial assistance under this part shall establish a State interagency coordinating council.

(2) APPOINTMENT.—The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.

(3) CHAIRPERSON.—The Governor shall designate a member of the council to serve as the chairperson of the council, or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency designated under section 635(a)(10) may not serve as the chairperson of the council.

(b) COMPOSITION.—

(1) IN GENERAL.—The council shall be composed as follows:

(A) PARENTS.—At least 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one such member shall be a par-

ent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

(B) SERVICE PROVIDERS.—At least 20 percent of the members shall be public or private providers of early intervention services.

(C) STATE LEGISLATURE.—At least one member shall be from the State legislature.

(D) PERSONNEL PREPARATION.—At least one member shall be involved in personnel preparation.

(E) AGENCY FOR EARLY INTERVENTION SERVICES.—At least one member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

(F) AGENCY FOR PRESCHOOL SERVICES.—At least one member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.

(G) AGENCY FOR HEALTH INSURANCE.—At least one member shall be from the agency responsible for the State governance of health insurance.

(H) HEAD START AGENCY.—A representative from a Head Start agency or program in the State.

(I) CHILD CARE AGENCY.—A representative from a State agency responsible for child care.

(2) OTHER MEMBERS.—The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs, or where there is no BIA-operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council.

(c) MEETINGS.—The council shall meet at least quarterly and in such places as it deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

(d) MANAGEMENT AUTHORITY.—Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

(e) FUNCTIONS OF COUNCIL.—

(1) DUTIES.—The council shall—

(A) advise and assist the lead agency designated or established under section 635(a)(10) in the performance of the responsibilities set forth in such section, particularly the identification of the sources of fiscal and other support for

services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;

(B) advise and assist the lead agency in the preparation of applications and amendments thereto;

(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and

(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

(2) AUTHORIZED ACTIVITY.—The council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.

(f) CONFLICT OF INTEREST.—No member of the council shall cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

SEC. 642. FEDERAL ADMINISTRATION.

Sections 616, 617, and 618 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—

(1) any reference in such sections to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

(2) any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to an early intervention service provider under this part; and

(3) any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

SEC. 643. ALLOCATION OF FUNDS.

(a) RESERVATION OF FUNDS FOR OUTLYING AREAS.—

(1) IN GENERAL.—From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve up to one percent for payments to Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs.

(2) CONSOLIDATION OF FUNDS.—The provisions of Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this part.

(b) PAYMENTS TO INDIANS.—

(1) IN GENERAL.—The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be dis-

tributed to tribes, tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year.

(2) ALLOCATION.—For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total of such children served by all tribes, tribal organizations, or consortia.

(3) INFORMATION.—To receive a payment under this paragraph, the tribe, tribal organization, or consortium shall submit such information to the Secretary of the Interior as is needed to determine the amounts to be allocated under paragraph (2).

(4) USE OF FUNDS.—The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child-find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. Such activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

(5) REPORTS.—To be eligible to receive a grant under paragraph (2), a tribe, tribal organization, or consortium shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 611(i)(3)(E). The Secretary of Education may require any additional information from the Secretary of the Interior.

(6) PROHIBITED USES OF FUNDS.—None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

(c) STATE ALLOTMENTS.—

(1) IN GENERAL.—Except as provided in paragraphs (2), (3), and (4), from the funds remaining for each fiscal year after the reservation and payments under subsections (a) and (b), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

(2) MINIMUM ALLOTMENTS.—Except as provided in paragraphs (3) and (4), no State shall receive an amount under this section for any fiscal year that is less than the greatest of—

(A) one-half of one percent of the remaining amount described in paragraph (1); or

(B) $500,000.

(3) SPECIAL RULE FOR 1998 AND 1999.—

(A) IN GENERAL.—Except as provided in paragraph (4), no State may receive an amount under this section for either fiscal year 1998 or 1999 that is less than the sum of the amounts such State received for fiscal year 1994 under—

(i) part H (as in effect for such fiscal year); and

(ii) subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as in effect on the day before the date of the enactment of the Improving America's Schools Act of 1994) for children with disabilities under 3 years of age.

(B) EXCEPTION.—If, for fiscal year 1998 or 1999, the number of infants and toddlers in a State, as determined under paragraph (1), is less than the number of infants and toddlers so determined for fiscal year 1994, the amount determined under subparagraph (A) for the State shall be reduced by the same percentage by which the number of such infants and toddlers so declined.

(4) RATABLE REDUCTION.—

(A) IN GENERAL.—If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allocations to such States for such year.

(B) ADDITIONAL FUNDS.—If additional funds become available for making payments under this subsection for a fiscal year, allocations that were reduced under subparagraph (A) shall be increased on the same basis they were reduced.

(5) DEFINITIONS.—For the purpose of this subsection—

(A) the terms "infants" and "toddlers" mean children under 3 years of age; and

(B) the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(d) REALLOTMENT OF FUNDS.—If a State elects not to receive its allotment under subsection (c), the Secretary shall reallot, among the remaining States, amounts from such State in accordance with such subsection.

SEC. 644. FEDERAL INTERAGENCY COORDINATING COUNCIL.

(a) ESTABLISHMENT AND PURPOSE.—

(1) In general.—The Secretary shall establish a Federal Interagency Coordinating Council in order to—

(A) minimize duplication of programs and activities across Federal, State, and local agencies, relating to—

(i) early intervention services for infants and toddlers with disabilities (including at-risk infants and toddlers) and their families; and

(ii) preschool or other appropriate services for children with disabilities;

(B) ensure the effective coordination of Federal early intervention and preschool programs and policies across Federal agencies;

(C) coordinate the provision of Federal technical assistance and support activities to States;

(D) identify gaps in Federal agency programs and services; and

(E) identify barriers to Federal interagency cooperation.

(2) Appointments.—The council established under paragraph (1) (hereafter in this section referred to as the "Council") and the chairperson of the Council shall be appointed by the Secretary in consultation with other appropriate Federal agencies. In making the appointments, the Secretary shall ensure that each member has sufficient authority to engage in policy planning and implementation on behalf of the department, agency, or program that the member represents.

(b) Composition.—The Council shall be composed of—

(1) a representative of the Office of Special Education Programs;

(2) a representative of the National Institute on Disability and Rehabilitation Research and a representative of the Office of Educational Research and Improvement;

(3) a representative of the Maternal and Child Health Services Block Grant Program;

(4) a representative of programs administered under the Developmental Disabilities Assistance and Bill of Rights Act;

(5) a representative of the Health Care Financing Administration;

(6) a representative of the Division of Birth Defects and Developmental Disabilities of the Centers for Disease Control;

(7) a representative of the Social Security Administration;

(8) a representative of the special supplemental nutrition program for women, infants, and children of the Department of Agriculture;

(9) a representative of the National Institute of Mental Health;

(10) a representative of the National Institute of Child Health and Human Development;

(11) a representative of the Bureau of Indian Affairs of the Department of the Interior;

(12) a representative of the Indian Health Service;

(13) a representative of the Surgeon General;

(14) a representative of the Department of Defense;

(15) a representative of the Children's Bureau, and a representative of the Head Start Bureau, of the Administration for Children and Families;

(16) a representative of the Substance Abuse and Mental Health Services Administration;

(17) a representative of the Pediatric AIDS Health Care Demonstration Program in the Public Health Service;

(18) parents of children with disabilities age 12 or under (who shall constitute at least 20 percent of the members of the Council), of whom at least one must have a child with a disability under the age of 6;

(19) at least 2 representatives of State lead agencies for early intervention services to infants and toddlers, one of whom must be a representative of a State educational agency and the other a representative of a non-educational agency;

(20) other members representing appropriate agencies involved in the provision of, or payment for, early intervention services and special education and related services to infants and toddlers with disabilities and their families and preschool children with disabilities; and

(21) other persons appointed by the Secretary.

(c) MEETINGS.—The Council shall meet at least quarterly and in such places as the Council deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

(d) FUNCTIONS OF THE COUNCIL.—The Council shall—

(1) advise and assist the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, and the Commissioner of Social Security in the performance of their responsibilities related to serving children from birth through age 5 who are eligible for services under this part or under part B;

(2) conduct policy analyses of Federal programs related to the provision of early intervention services and special educational and related services to infants and toddlers with disabilities and their families, and preschool children with disabilities, in order to determine areas of conflict, overlap, duplication, or inappropriate omission;

(3) identify strategies to address issues described in paragraph (2);

(4) develop and recommend joint policy memoranda concerning effective interagency collaboration, including modifications to regulations, and the elimination of barriers to interagency programs and activities;

(5) coordinate technical assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention programming for infants and toddlers with disabilities and their families and preschool children with disabilities; and

(6) facilitate activities in support of States' interagency coordination efforts.

(e) CONFLICT OF INTEREST.—No member of the Council shall cast a vote on any matter that would provide direct financial benefit to

that member or otherwise give the appearance of a conflict of interest under Federal law.

(f) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the establishment or operation of the Council.

SEC. 645. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this part, there are authorized to be appropriated $400,000,000 for fiscal year 1998 and such sums as may be necessary for each of the fiscal years 1999 through 2002.

PART D—NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH DISABILITIES

Subpart 1—State Program Improvement Grants for Children with Disabilities

SEC. 651. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) States are responding with some success to multiple pressures to improve educational and transitional services and results for children with disabilities in response to growing demands imposed by ever-changing factors, such as demographics, social policies, and labor and economic markets.

(2) In order for States to address such demands and to facilitate lasting systemic change that is of benefit to all students, including children with disabilities, States must involve local educational agencies, parents, individuals with disabilities and their families, teachers and other service providers, and other interested individuals and organizations in carrying out comprehensive strategies to improve educational results for children with disabilities.

(3) Targeted Federal financial resources are needed to assist States, working in partnership with others, to identify and make needed changes to address the needs of children with disabilities into the next century.

(4) State educational agencies, in partnership with local educational agencies and other individuals and organizations, are in the best position to identify and design ways to meet emerging and expanding demands to improve education for children with disabilities and to address their special needs.

(5) Research, demonstration, and practice over the past 20 years in special education and related disciplines have built a foundation of knowledge on which State and local systemic-change activities can now be based.

(6) Such research, demonstration, and practice in special education and related disciplines have demonstrated that an effective educational system now and in the future must—

(A) maintain high academic standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that students who are

children with disabilities have maximum opportunities to achieve those standards and goals;

(B) create a system that fully addresses the needs of all students, including children with disabilities, by addressing the needs of children with disabilities in carrying out educational reform activities;

(C) clearly define, in measurable terms, the school and post-school results that children with disabilities are expected to achieve;

(D) promote service integration, and the coordination of State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who require significant levels of support to maximize their participation and learning in school and the community;

(E) ensure that children with disabilities are provided assistance and support in making transitions as described in section 674(b)(3)(C);

(F) promote comprehensive programs of professional development to ensure that the persons responsible for the education or a transition of children with disabilities possess the skills and knowledge necessary to address the educational and related needs of those children;

(G) disseminate to teachers and other personnel serving children with disabilities research-based knowledge about successful teaching practices and models and provide technical assistance to local educational agencies and schools on how to improve results for children with disabilities;

(H) create school-based disciplinary strategies that will be used to reduce or eliminate the need to use suspension and expulsion as disciplinary options for children with disabilities;

(I) establish placement-neutral funding formulas and cost-effective strategies for meeting the needs of children with disabilities; and

(J) involve individuals with disabilities and parents of children with disabilities in planning, implementing, and evaluating systemic-change activities and educational reforms.

(b) PURPOSE.—The purpose of this subpart is to assist State educational agencies, and their partners referred to in section 652(b), in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

SEC. 652. ELIGIBILITY AND COLLABORATIVE PROCESS.

(a) ELIGIBLE APPLICANTS.—A State educational agency may apply for a grant under this subpart for a grant period of not less than 1 year and not more than 5 years.

(b) PARTNERS.—

(1) REQUIRED PARTNERS.—

(A) CONTRACTUAL PARTNERS.—In order to be considered for a grant under this subpart, a State educational agency

shall establish a partnership with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities.

(B) OTHER PARTNERS.—In order to be considered for a grant under this subpart, a State educational agency shall work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including—

(i) the Governor;

(ii) parents of children with disabilities;

(iii) parents of nondisabled children;

(iv) individuals with disabilities;

(v) organizations representing individuals with disabilities and their parents, such as parent training and information centers;

(vi) community-based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

(vii) the lead State agency for part C;

(viii) general and special education teachers, and early intervention personnel;

(ix) the State advisory panel established under part C;

(x) the State interagency coordinating council established under part C; and

(xi) institutions of higher education within the State.

(2) OPTIONAL PARTNERS.—A partnership under subparagraph (A) or (B) of paragraph (1) may also include—

(A) individuals knowledgeable about vocational education;

(B) the State agency for higher education;

(C) the State vocational rehabilitation agency;

(D) public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice; and

(E) other individuals.

SEC. 653. APPLICATIONS.

(a) IN GENERAL.—

(1) SUBMISSION.—A State educational agency that desires to receive a grant under this subpart shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.

(2) STATE IMPROVEMENT PLAN.—The application shall include a State improvement plan that—

(A) is integrated, to the maximum extent possible, with State plans under the Elementary and Secondary Education Act of 1965 and the Rehabilitation Act of 1973, as appropriate; and

(B) meets the requirements of this section.

(b) DETERMINING CHILD AND PROGRAM NEEDS.—

(1) IN GENERAL.—Each State improvement plan shall identify those critical aspects of early intervention, general education, and special education programs (including professional development, based on an assessment of State and local needs) that

must be improved to enable children with disabilities to meet the goals established by the State under section 612(a)(16).

(2) REQUIRED ANALYSES.—To meet the requirement of paragraph (1), the State improvement plan shall include at least—

(A) an analysis of all information, reasonably available to the State educational agency, on the performance of children with disabilities in the State, including—

(i) their performance on State assessments and other performance indicators established for all children, including drop-out rates and graduation rates;

(ii) their participation in postsecondary education and employment; and

(iii) how their performance on the assessments and indicators described in clause (i) compares to that of non-disabled children;

(B) an analysis of State and local needs for professional development for personnel to serve children with disabilities that includes, at a minimum—

(i) the number of personnel providing special education and related services; and

(ii) relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals described in clause (i) with temporary certification), and on the extent of certification or retraining necessary to eliminate such shortages, that is based, to the maximum extent possible, on existing assessments of personnel needs;

(C) an analysis of the major findings of the Secretary's most recent reviews of State compliance, as they relate to improving results for children with disabilities; and

(D) an analysis of other information, reasonably available to the State, on the effectiveness of the State's systems of early intervention, special education, and general education in meeting the needs of children with disabilities.

(c) IMPROVEMENT STRATEGIES.—Each State improvement plan shall—

(1) describe a partnership agreement that—

(A) specifies—

(i) the nature and extent of the partnership among the State educational agency, local educational agencies, and other State agencies involved in, or concerned with, the education of children with disabilities, and the respective roles of each member of the partnership; and

(ii) how such agencies will work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of these persons and organizations; and

(B) is in effect for the period of the grant;

(2) describe how grant funds will be used in undertaking the systemic-change activities, and the amount and nature of funds from any other sources, including part B funds retained for use

at the State level under sections 611(f) and 619(d), that will be committed to the systemic-change activities;

(3) describe the strategies the State will use to address the needs identified under subsection (b), including—

(A) how the State will change State policies and procedures to address systemic barriers to improving results for children with disabilities;

(B) how the State will hold local educational agencies and schools accountable for educational progress of children with disabilities;

(C) how the State will provide technical assistance to local educational agencies and schools to improve results for children with disabilities;

(D) how the State will address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of children with disabilities, including a description of how—

(i) the State will prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities, including how the State will work with other States on common certification criteria;

(ii) the State will prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities;

(iii) the State will work with institutions of higher education and other entities that (on both a pre-service and an in-service basis) prepare personnel who work with children with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet State and local needs;

(iv) the State will work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of such a program of preparation;

(v) the State will work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel;

(vi) the State will enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others;

(vii) the State will acquire and disseminate, to teachers, administrators, school board members, and related

services personnel, significant knowledge derived from educational research and other sources, and how the State will, when appropriate, adopt promising practices, materials, and technology;

(viii) the State will recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are underrepresented in the fields of regular education, special education, and related services;

(ix) the plan is integrated, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other Federal and State laws that address personnel recruitment and training; and

(x) the State will provide for the joint training of parents and special education, related services, and general education personnel;

(E) strategies that will address systemic problems identified in Federal compliance reviews, including shortages of qualified personnel;

(F) how the State will disseminate results of the local capacity-building and improvement projects funded under section 611(f)(4);

(G) how the State will address improving results for children with disabilities in the geographic areas of greatest need; and

(H) how the State will assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective; and

(4) describe how the improvement strategies described in paragraph (3) will be coordinated with public and private sector resources.

(d) Competitive Awards.—

(1) In general.—The Secretary shall make grants under this subpart on a competitive basis.

(2) Priority.—The Secretary may give priority to applications on the basis of need, as indicated by such information as the findings of Federal compliance reviews.

(e) Peer Review.—

(1) In general.—The Secretary shall use a panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications under this subpart.

(2) Composition of panel.—A majority of a panel described in paragraph (1) shall be composed of individuals who are not employees of the Federal Government.

(3) Payment of fees and expenses of certain members.—The Secretary may use available funds appropriated to carry out this subpart to pay the expenses and fees of panel members who are not employees of the Federal Government.

(f) Reporting Procedures.—Each State educational agency that receives a grant under this subpart shall submit performance reports to the Secretary pursuant to a schedule to be determined by the Secretary, but not more frequently than annually. The reports shall describe the progress of the State in meeting the performance

goals established under section 612(a)(16), analyze the effectiveness of the State's strategies in meeting those goals, and identify any changes in the strategies needed to improve its performance.

SEC. 654. USE OF FUNDS.

(a) IN GENERAL.—

(1) ACTIVITIES.—A State educational agency that receives a grant under this subpart may use the grant to carry out any activities that are described in the State's application and that are consistent with the purpose of this subpart.

(2) CONTRACTS AND SUBGRANTS.—Each such State educational agency—

(A) shall, consistent with its partnership agreement under section 652(b), award contracts or subgrants to local educational agencies, institutions of higher education, and parent training and information centers, as appropriate, to carry out its State improvement plan under this subpart; and

(B) may award contracts and subgrants to other public and private entities, including the lead agency under part C, to carry out such plan.

(b) USE OF FUNDS FOR PROFESSIONAL DEVELOPMENT.—A State educational agency that receives a grant under this subpart—

(1) shall use not less than 75 percent of the funds it receives under the grant for any fiscal year—

(A) to ensure that there are sufficient regular education, special education, and related services personnel who have the skills and knowledge necessary to meet the needs of children with disabilities and developmental goals of young children; or

(B) to work with other States on common certification criteria; or

(2) shall use not less than 50 percent of such funds for such purposes, if the State demonstrates to the Secretary's satisfaction that it has the personnel described in paragraph (1)(A).

(c) GRANTS TO OUTLYING AREAS.—Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds received under this subpart.

SEC. 655. MINIMUM STATE GRANT AMOUNTS.

(a) IN GENERAL.—The Secretary shall make a grant to each State educational agency whose application the Secretary has selected for funding under this subpart in an amount for each fiscal year that is—

(1) not less than $500,000, nor more than $2,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(2) not less than $80,000, in the case of an outlying area.

(b) INFLATION ADJUSTMENT.—Beginning with fiscal year 1999, the Secretary may increase the maximum amount described in subsection (a)(1) to account for inflation.

(c) FACTORS.—The Secretary shall set the amount of each grant under subsection (a) after considering—

(1) the amount of funds available for making the grants;

(2) the relative population of the State or outlying area; and

(3) the types of activities proposed by the State or outlying area.

SEC. 656. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 1998 through 2002.

Subpart 2—Coordinated Research, Personnel Preparation, Technical Assistance, Support, and Dissemination of Information

SEC. 661. ADMINISTRATIVE PROVISIONS.

(a) COMPREHENSIVE PLAN.—

(1) IN GENERAL.—The Secretary shall develop and implement a comprehensive plan for activities carried out under this subpart in order to enhance the provision of educational, related, transitional, and early intervention services to children with disabilities under parts B and C. The plan shall include mechanisms to address educational, related services, transitional, and early intervention needs identified by State educational agencies in applications submitted for State program improvement grants under subpart 1.

(2) PARTICIPANTS IN PLAN DEVELOPMENT.—In developing the plan described in paragraph (1), the Secretary shall consult with—

(A) individuals with disabilities;

(B) parents of children with disabilities;

(C) appropriate professionals; and

(D) representatives of State and local educational agencies, private schools, institutions of higher education, other Federal agencies, the National Council on Disability, and national organizations with an interest in, and expertise in, providing services to children with disabilities and their families.

(3) PUBLIC COMMENT.—The Secretary shall take public comment on the plan.

(4) DISTRIBUTION OF FUNDS.—In implementing the plan, the Secretary shall, to the extent appropriate, ensure that funds are awarded to recipients under this subpart to carry out activities that benefit, directly or indirectly, children with disabilities of all ages.

(5) REPORTS TO CONGRESS.—The Secretary shall periodically report to the Congress on the Secretary's activities under this subsection, including an initial report not later than the date that is 18 months after the date of the enactment of the Individuals with Disabilities Act Amendments of 1997.

(b) ELIGIBLE APPLICANTS.—

(1) IN GENERAL.—Except as otherwise provided in this subpart, the following entities are eligible to apply for a grant, contract, or cooperative agreement under this subpart:

(A) A State educational agency.

(B) A local educational agency.

(C) An institution of higher education.

(D) Any other public agency.

(E) A private nonprofit organization.

(F) An outlying area.

(G) An Indian tribe or a tribal organization (as defined under section 4 of the Indian Self-Determination and Education Assistance Act).

(H) A for-profit organization, if the Secretary finds it appropriate in light of the purposes of a particular competition for a grant, contract, or cooperative agreement under this subpart.

(2) SPECIAL RULE.—The Secretary may limit the entities eligible for an award of a grant, contract, or cooperative agreement to one or more categories of eligible entities described in paragraph (1).

(c) USE OF FUNDS BY SECRETARY.—Notwithstanding any other provision of law, and in addition to any authority granted the Secretary under chapter 1 or chapter 2, the Secretary may use up to 20 percent of the funds available under either chapter 1 or chapter 2 for any fiscal year to carry out any activity, or combination of activities, subject to such conditions as the Secretary determines are appropriate effectively to carry out the purposes of such chapters, that—

(A) is consistent with the purposes of chapter 1, chapter 2, or both; and

(B) involves—

(i) research;

(ii) personnel preparation;

(iii) parent training and information;

(iv) technical assistance and dissemination;

(v) technology development, demonstration, and utilization; or

(vi) media services.

(d) SPECIAL POPULATIONS.—

(1) APPLICATION REQUIREMENT.—In making an award of a grant, contract, or cooperative agreement under this subpart, the Secretary shall, as appropriate, require an applicant to demonstrate how the applicant will address the needs of children with disabilities from minority backgrounds.

(2) OUTREACH AND TECHNICAL ASSISTANCE.—

(A) REQUIREMENT.—Notwithstanding any other provision of this Act, the Secretary shall ensure that at least one percent of the total amount of funds appropriated to carry out this subpart is used for either or both of the following activities:

(i) To provide outreach and technical assistance to Historically Black Colleges and Universities, and to institutions of higher education with minority enrollments of at least 25 percent, to promote the participation of such colleges, universities, and institutions in activities under this subpart.

(ii) To enable Historically Black Colleges and Universities, and the institutions described in clause (i), to assist other colleges, universities, institutions, and

agencies in improving educational and transitional results for children with disabilities.

(B) Reservation of funds.—The Secretary may reserve funds appropriated under this subpart to satisfy the requirement of subparagraph (A).

(e) Priorities.—

(1) In general.—Except as otherwise explicitly authorized in this subpart, the Secretary shall ensure that a grant, contract, or cooperative agreement under chapter 1 or 2 is awarded only—

(A) for activities that are designed to benefit children with disabilities, their families, or the personnel employed to work with such children or their families; or

(B) to benefit other individuals with disabilities who such chapter is intended to benefit.

(2) Priority for particular activities.—Subject to paragraph (1), the Secretary, in making an award of a grant, contract, or cooperative agreement under this subpart, may, without regard to the rule making procedures under section 553 of title 5, United States Code, limit competitions to, or otherwise give priority to—

(A) projects that address one or more—

(i) age ranges;

(ii) disabilities;

(iii) school grades;

(iv) types of educational placements or early intervention environments;

(v) types of services;

(vi) content areas, such as reading; or

(vii) effective strategies for helping children with disabilities learn appropriate behavior in the school and other community-based educational settings;

(B) projects that address the needs of children based on the severity of their disability;

(C) projects that address the needs of—

(i) low-achieving students;

(ii) underserved populations;

(iii) children from low-income families;

(iv) children with limited English proficiency;

(v) unserved and underserved areas;

(vi) particular types of geographic areas; or

(vii) children whose behavior interferes with their learning and socialization;

(D) projects to reduce inappropriate identification of children as children with disabilities, particularly among minority children;

(E) projects that are carried out in particular areas of the country, to ensure broad geographic coverage; and

(F) any activity that is expressly authorized in chapter 1 or 2.

(f) Applicant and Recipient Responsibilities.—

(1) Development and assessment of projects.—The Secretary shall require that an applicant for, and a recipient of, a

grant, contract, or cooperative agreement for a project under this subpart—

(A) involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the project; and

(B) where appropriate, determine whether the project has any potential for replication and adoption by other entities.

(2) ADDITIONAL RESPONSIBILITIES.—The Secretary may require a recipient of a grant, contract, or cooperative agreement for a project under this subpart—

(A) to share in the cost of the project;

(B) to prepare the research and evaluation findings and products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities;

(C) to disseminate such findings and products; and

(D) to collaborate with other such recipients in carrying out subparagraphs (B) and (C).

(g) APPLICATION MANAGEMENT.—

(1) STANDING PANEL.—

(A) IN GENERAL.—The Secretary shall establish and use a standing panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications under this subpart that, individually, request more than $75,000 per year in Federal financial assistance.

(B) MEMBERSHIP.—The standing panel shall include, at a minimum—

(i) individuals who are representatives of institutions of higher education that plan, develop, and carry out programs of personnel preparation;

(ii) individuals who design and carry out programs of research targeted to the improvement of special education programs and services;

(iii) individuals who have recognized experience and knowledge necessary to integrate and apply research findings to improve educational and transitional results for children with disabilities;

(iv) individuals who administer programs at the State or local level in which children with disabilities participate;

(v) individuals who prepare parents of children with disabilities to participate in making decisions about the education of their children;

(vi) individuals who establish policies that affect the delivery of services to children with disabilities;

(vii) individuals who are parents of children with disabilities who are benefiting, or have benefited, from coordinated research, personnel preparation, and technical assistance; and

(viii) individuals with disabilities.

(C) TRAINING.—The Secretary shall provide training to the individuals who are selected as members of the standing panel under this paragraph.

(D) TERM.—No individual shall serve on the standing panel for more than 3 consecutive years, unless the Secretary determines that the individual's continued participation is necessary for the sound administration of this subpart.

(2) PEER-REVIEW PANELS FOR PARTICULAR COMPETITIONS.—

(A) COMPOSITION.—The Secretary shall ensure that each sub-panel selected from the standing panel that reviews applications under this subpart includes—

(i) individuals with knowledge and expertise on the issues addressed by the activities authorized by the subpart; and

(ii) to the extent practicable, parents of children with disabilities, individuals with disabilities, and persons from diverse backgrounds.

(B) FEDERAL EMPLOYMENT LIMITATION.—A majority of the individuals on each sub-panel that reviews an application under this subpart shall be individuals who are not employees of the Federal Government.

(3) USE OF DISCRETIONARY FUNDS FOR ADMINISTRATIVE PURPOSES.—

(A) EXPENSES AND FEES OF NON-FEDERAL PANEL MEMBERS.—The Secretary may use funds available under this subpart to pay the expenses and fees of the panel members who are not officers or employees of the Federal Government.

(B) ADMINISTRATIVE SUPPORT.—The Secretary may use not more than 1 percent of the funds appropriated to carry out this subpart to pay non-Federal entities for administrative support related to management of applications submitted under this subpart.

(C) MONITORING.—The Secretary may use funds available under this subpart to pay the expenses of Federal employees to conduct on-site monitoring of projects receiving $500,000 or more for any fiscal year under this subpart.

(h) PROGRAM EVALUATION.—The Secretary may use funds appropriated to carry out this subpart to evaluate activities carried out under the subpart.

(i) MINIMUM FUNDING REQUIRED.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall ensure that, for each fiscal year, at least the following amounts are provided under this subpart to address the following needs:

(A) $12,832,000 to address the educational, related services, transitional, and early intervention needs of children with deaf-blindness.

(B) $4,000,000 to address the postsecondary, vocational, technical, continuing, and adult education needs of individuals with deafness.

(C) $4,000,000 to address the educational, related services, and transitional needs of children with an emotional disturbance and those who are at risk of developing an emotional disturbance.

(2) Ratable reduction.—If the total amount appropriated to carry out sections 672, 673, and 685 for any fiscal year is less than $130,000,000, the amounts listed in (1) shall be ratably reduced.

(j) Eligibility for Financial Assistance.—Effective for fiscal years for which the Secretary may make grants under section 619(b), no State or local educational agency or educational service agency or other public institution or agency may receive a grant under this subpart which relates exclusively to programs, projects, and activities pertaining to children aged three to five, inclusive, unless the State is eligible to receive a grant under section 619(b).

Chapter 1—Improving Early Intervention, Educational, and Transitional Services and Results for Children with Disabilities through Coordinated Research and Personnel Preparation

SEC. 671. FINDINGS AND PURPOSE.

(a) Findings.—The Congress finds the following:

(1) The Federal Government has an ongoing obligation to support programs, projects, and activities that contribute to positive results for children with disabilities, enabling them—

(A) to meet their early intervention, educational, and transitional goals and, to the maximum extent possible, educational standards that have been established for all children; and

(B) to acquire the skills that will empower them to lead productive and independent adult lives.

(2)(A) As a result of more than 20 years of Federal support for research, demonstration projects, and personnel preparation, there is an important knowledge base for improving results for children with disabilities.

(B) Such knowledge should be used by States and local educational agencies to design and implement state-of-the-art educational systems that consider the needs of, and include, children with disabilities, especially in environments in which they can learn along with their peers and achieve results measured by the same standards as the results of their peers.

(3)(A) Continued Federal support is essential for the development and maintenance of a coordinated and high-quality program of research, demonstration projects, dissemination of information, and personnel preparation.

(B) Such support—

(i) enables State educational agencies and local educational agencies to improve their educational systems and results for children with disabilities;

(ii) enables State and local agencies to improve early intervention services and results for infants and toddlers with disabilities and their families; and

(iii) enhances the opportunities for general and special education personnel, related services personnel, parents, and paraprofessionals to participate in pre-service and in-

service training, to collaborate, and to improve results for children with disabilities and their families.

(4) The Federal Government plays a critical role in facilitating the availability of an adequate number of qualified personnel—

(A) to serve effectively the over 5,000,000 children with disabilities;

(B) to assume leadership positions in administrative and direct-service capacities related to teacher training and research concerning the provision of early intervention services, special education, and related services; and

(C) to work with children with low-incidence disabilities and their families.

(5) The Federal Government performs the role described in paragraph (4)—

(A) by supporting models of personnel development that reflect successful practice, including strategies for recruiting, preparing, and retaining personnel;

(B) by promoting the coordination and integration of—

(i) personnel-development activities for teachers of children with disabilities; and

(ii) other personnel-development activities supported under Federal law, including this chapter;

(C) by supporting the development and dissemination of information about teaching standards; and

(D) by promoting the coordination and integration of personnel-development activities through linkage with systemic-change activities within States and nationally.

(b) PURPOSE.—The purpose of this chapter is to provide Federal funding for coordinated research, demonstration projects, outreach, and personnel-preparation activities that—

(1) are described in sections 672 through 674;

(2) are linked with, and promote, systemic change; and

(3) improve early intervention, educational, and transitional results for children with disabilities.

SEC. 672. RESEARCH AND INNOVATION TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES.

(a) IN GENERAL.—The Secretary shall make competitive grants to, or enter into contracts or cooperative agreements with, eligible entities to produce, and advance the use of, knowledge—

(1) to improve—

(A) services provided under this Act, including the practices of professionals and others involved in providing such services to children with disabilities; and

(B) educational results for children with disabilities;

(2) to address the special needs of preschool-aged children and infants and toddlers with disabilities, including infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to them;

(3) to address the specific problems of over-identification and under-identification of children with disabilities;

(4) to develop and implement effective strategies for addressing inappropriate behavior of students with disabilities in

schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services;

(5) to improve secondary and postsecondary education and transitional services for children with disabilities; and

(6) to address the range of special education, related services, and early intervention needs of children with disabilities who need significant levels of support to maximize their participation and learning in school and in the community.

(b) NEW KNOWLEDGE PRODUCTION; AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that lead to the production of new knowledge.

(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

(A) Expanding understanding of the relationships between learning characteristics of children with disabilities and the diverse ethnic, cultural, linguistic, social, and economic backgrounds of children with disabilities and their families.

(B) Developing or identifying innovative, effective, and efficient curricula designs, instructional approaches, and strategies, and developing or identifying positive academic and social learning opportunities, that—

(i) enable children with disabilities to make effective transitions described in section 674(b)(3)(C) or transitions between educational settings; and

(ii) improve educational and transitional results for children with disabilities at all levels of the educational system in which the activities are carried out and, in particular, that improve the progress of the children, as measured by assessments within the general education curriculum involved.

(C) Advancing the design of assessment tools and procedures that will accurately and efficiently determine the special instructional, learning, and behavioral needs of children with disabilities, especially within the context of general education.

(D) Studying and promoting improved alignment and compatibility of general and special education reforms concerned with curricular and instructional reform, evaluation and accountability of such reforms, and administrative procedures.

(E) Advancing the design, development, and integration of technology, assistive technology devices, media, and materials, to improve early intervention, educational, and transitional services and results for children with disabilities.

(F) Improving designs, processes, and results of personnel preparation for personnel who provide services to children with disabilities through the acquisition of information on, and implementation of, research-based practices.

(G) Advancing knowledge about the coordination of education with health and social services.

(H) Producing information on the long-term impact of early intervention and education on results for individuals with disabilities through large-scale longitudinal studies.

(c) INTEGRATION OF RESEARCH AND PRACTICE; AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that integrate research and practice, including activities that support State systemic-change and local capacity-building and improvement efforts.

(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

(A) Model demonstration projects to apply and test research findings in typical service settings to determine the usability, effectiveness, and general applicability of such research findings in such areas as improving instructional methods, curricula, and tools, such as textbooks and media.

(B) Demonstrating and applying research-based findings to facilitate systemic changes, related to the provision of services to children with disabilities, in policy, procedure, practice, and the training and use of personnel.

(C) Promoting and demonstrating the coordination of early intervention and educational services for children with disabilities with services provided by health, rehabilitation, and social service agencies.

(D) Identifying and disseminating solutions that overcome systemic barriers to the effective and efficient delivery of early intervention, educational, and transitional services to children with disabilities.

(d) IMPROVING THE USE OF PROFESSIONAL KNOWLEDGE; AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that improve the use of professional knowledge, including activities that support State systemic-change and local capacity-building and improvement efforts.

(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

(A) Synthesizing useful research and other information relating to the provision of services to children with disabilities, including effective practices.

(B) Analyzing professional knowledge bases to advance an understanding of the relationships, and the effectiveness of practices, relating to the provision of services to children with disabilities.

(C) Ensuring that research and related products are in appropriate formats for distribution to teachers, parents, and individuals with disabilities.

(D) Enabling professionals, parents of children with disabilities, and other persons, to learn about, and implement,

the findings of research, and successful practices developed in model demonstration projects, relating to the provision of services to children with disabilities.

(E) Conducting outreach, and disseminating information relating to successful approaches to overcoming systemic barriers to the effective and efficient delivery of early intervention, educational, and transitional services, to personnel who provide services to children with disabilities.

(e) Balance Among Activities and Age Ranges.—In carrying out this section, the Secretary shall ensure that there is an appropriate balance—

(1) among knowledge production, integration of research and practice, and use of professional knowledge; and

(2) across all age ranges of children with disabilities.

(f) Applications.—An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(g) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1998 through 2002.

SEC. 673. PERSONNEL PREPARATION TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES.

(a) In General.—The Secretary shall, on a competitive basis, make grants to, or enter into contracts or cooperative agreements with, eligible entities—

(1) to help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education, to work with children with disabilities; and

(2) to ensure that those personnel have the skills and knowledge, derived from practices that have been determined, through research and experience, to be successful, that are needed to serve those children.

(b) Low-Incidence Disabilities; Authorized Activities.—

(1) In general.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that benefit children with low-incidence disabilities.

(2) Authorized activities.—Activities that may be carried out under this subsection include activities such as the following:

(A) Preparing persons who—

(i) have prior training in educational and other related service fields; and

(ii) are studying to obtain degrees, certificates, or licensure that will enable them to assist children with disabilities to achieve the objectives set out in their individualized education programs described in section 614(d), or to assist infants and toddlers with disabilities to achieve the outcomes described in their individualized family service plans described in section 636.

(B) Providing personnel from various disciplines with interdisciplinary training that will contribute to improve-

ment in early intervention, educational, and transitional results for children with disabilities.

(C) Preparing personnel in the innovative uses and application of technology to enhance learning by children with disabilities through early intervention, educational, and transitional services.

(D) Preparing personnel who provide services to visually impaired or blind children to teach and use Braille in the provision of services to such children.

(E) Preparing personnel to be qualified educational interpreters, to assist children with disabilities, particularly deaf and hard-of-hearing children in school and school-related activities and deaf and hard-of-hearing infants and toddlers and preschool children in early intervention and preschool programs.

(F) Preparing personnel who provide services to children with significant cognitive disabilities and children with multiple disabilities.

(3) DEFINITION.—As used in this section, the term "low-incidence disability" means—

(A) a visual or hearing impairment, or simultaneous visual and hearing impairments;

(B) a significant cognitive impairment; or

(C) any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.

(4) SELECTION OF RECIPIENTS.—In selecting recipients under this subsection, the Secretary may give preference to applications that propose to prepare personnel in more than one low-incidence disability, such as deafness and blindness.

(5) PREPARATION IN USE OF BRAILLE.—The Secretary shall ensure that all recipients of assistance under this subsection who will use that assistance to prepare personnel to provide services to visually impaired or blind children that can appropriately be provided in Braille will prepare those individuals to provide those services in Braille.

(c) LEADERSHIP PREPARATION; AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—In carrying out this section, the Secretary shall support leadership preparation activities that are consistent with the objectives described in subsection (a).

(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

(A) Preparing personnel at the advanced graduate, doctoral, and postdoctoral levels of training to administer, enhance, or provide services for children with disabilities.

(B) Providing interdisciplinary training for various types of leadership personnel, including teacher preparation faculty, administrators, researchers, supervisors, principals, and other persons whose work affects early intervention, educational, and transitional services for children with disabilities.

(d) PROJECTS OF NATIONAL SIGNIFICANCE; AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that are of national significance and have broad applicability.

(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

(A) Developing and demonstrating effective and efficient practices for preparing personnel to provide services to children with disabilities, including practices that address any needs identified in the State's improvement plan under part C;

(B) Demonstrating the application of significant knowledge derived from research and other sources in the development of programs to prepare personnel to provide services to children with disabilities.

(C) Demonstrating models for the preparation of, and interdisciplinary training of, early intervention, special education, and general education personnel, to enable the personnel—

(i) to acquire the collaboration skills necessary to work within teams to assist children with disabilities; and

(ii) to achieve results that meet challenging standards, particularly within the general education curriculum.

(D) Demonstrating models that reduce shortages of teachers, and personnel from other relevant disciplines, who serve children with disabilities, through reciprocity arrangements between States that are related to licensure and certification.

(E) Developing, evaluating, and disseminating model teaching standards for persons working with children with disabilities.

(F) Promoting the transferability, across State and local jurisdictions, of licensure and certification of teachers and administrators working with such children.

(G) Developing and disseminating models that prepare teachers with strategies, including behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom.

(H) Institutes that provide professional development that addresses the needs of children with disabilities to teachers or teams of teachers, and where appropriate, to school board members, administrators, principals, pupil-service personnel, and other staff from individual schools.

(I) Projects to improve the ability of general education teachers, principals, and other administrators to meet the needs of children with disabilities.

(J) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, qualified teachers, especially from groups

that are underrepresented in the teaching profession, including individuals with disabilities.

(K) Supporting institutions of higher education with minority enrollments of at least 25 percent for the purpose of preparing personnel to work with children with disabilities.

(e) HIGH-INCIDENCE DISABILITIES; AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), to benefit children with high-incidence disabilities, such as children with specific learning disabilities, speech or language impairment, or mental retardation.

(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include the following:

(A) Activities undertaken by institutions of higher education, local educational agencies, and other local entities—

(i) to improve and reform their existing programs to prepare teachers and related services personnel—

(I) to meet the diverse needs of children with disabilities for early intervention, educational, and transitional services; and

(II) to work collaboratively in regular classroom settings; and

(ii) to incorporate best practices and research-based knowledge about preparing personnel so they will have the knowledge and skills to improve educational results for children with disabilities.

(B) Activities incorporating innovative strategies to recruit and prepare teachers and other personnel to meet the needs of areas in which there are acute and persistent shortages of personnel.

(C) Developing career opportunities for paraprofessionals to receive training as special education teachers, related services personnel, and early intervention personnel, including interdisciplinary training to enable them to improve early intervention, educational, and transitional results for children with disabilities.

(f) APPLICATIONS.—

(1) IN GENERAL.—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(2) IDENTIFIED STATE NEEDS.—

(A) REQUIREMENT TO ADDRESS IDENTIFIED NEEDS.—Any application under subsection (b), (c), or (e) shall include information demonstrating to the satisfaction of the Secretary that the activities described in the application will address needs identified by the State or States the applicant proposes to serve.

(B) COOPERATION WITH STATE EDUCATIONAL AGENCIES.—Any applicant that is not a local educational agency or a State educational agency shall include information demonstrating to the satisfaction of the Secretary that the applicant and one or more State educational agencies have

engaged in a cooperative effort to plan the project to which the application pertains, and will cooperate in carrying out and monitoring the project.

(3) ACCEPTANCE BY STATES OF PERSONNEL PREPARATION REQUIREMENTS.—The Secretary may require applicants to provide letters from one or more States stating that the States—

(A) intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities; and

(B) need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development under parts B and C.

(g) SELECTION OF RECIPIENTS.—

(1) IMPACT OF PROJECT.—In selecting recipients under this section, the Secretary may consider the impact of the project proposed in the application in meeting the need for personnel identified by the States.

(2) REQUIREMENT ON APPLICANTS TO MEET STATE AND PROFESSIONAL STANDARDS.—The Secretary shall make grants under this section only to eligible applicants that meet State and professionally-recognized standards for the preparation of special education and related services personnel, if the purpose of the project is to assist personnel in obtaining degrees.

(3) PREFERENCES.—In selecting recipients under this section, the Secretary may—

(A) give preference to institutions of higher education that are educating regular education personnel to meet the needs of children with disabilities in integrated settings and educating special education personnel to work in collaboration with regular educators in integrated settings; and

(B) give preference to institutions of higher education that are successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which they are preparing individuals.

(h) SERVICE OBLIGATION.—

(1) IN GENERAL.—Each application for funds under subsections (b) and (e), and to the extent appropriate subsection (d), shall include an assurance that the applicant will ensure that individuals who receive a scholarship under the proposed project will subsequently provide special education and related services to children with disabilities for a period of 2 years for every year for which assistance was received or repay all or part of the cost of that assistance, in accordance with regulations issued by the Secretary.

(2) LEADERSHIP PREPARATION.—Each application for funds under subsection (c) shall include an assurance that the applicant will ensure that individuals who receive a scholarship under the proposed project will subsequently perform work related to their preparation for a period of 2 years for every year

for which assistance was received or repay all or part of such costs, in accordance with regulations issued by the Secretary.

(i) SCHOLARSHIPS.—The Secretary may include funds for scholarships, with necessary stipends and allowances, in awards under subsections (b), (c), (d), and (e).

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1998 through 2002.

SEC. 674. STUDIES AND EVALUATIONS.

(a) STUDIES AND EVALUATIONS.—

(1) IN GENERAL.—The Secretary shall, directly or through grants, contracts, or cooperative agreements, assess the progress in the implementation of this Act, including the effectiveness of State and local efforts to provide—

(A) a free appropriate public education to children with disabilities; and

(B) early intervention services to infants and toddlers with disabilities and infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to them.

(2) AUTHORIZED ACTIVITIES.—In carrying out this subsection, the Secretary may support studies, evaluations, and assessments, including studies that—

(A) analyze measurable impact, outcomes, and results achieved by State educational agencies and local educational agencies through their activities to reform policies, procedures, and practices designed to improve educational and transitional services and results for children with disabilities;

(B) analyze State and local needs for professional development, parent training, and other appropriate activities that can reduce the need for disciplinary actions involving children with disabilities;

(C) assess educational and transitional services and results for children with disabilities from minority backgrounds, including—

(i) data on—

(I) the number of minority children who are referred for special education evaluation;

(II) the number of minority children who are receiving special education and related services and their educational or other service placement; and

(III) the number of minority children who graduated from secondary and postsecondary education programs; and

(ii) the performance of children with disabilities from minority backgrounds on State assessments and other performance indicators established for all students;

(D) measure educational and transitional services and results of children with disabilities under this Act, including longitudinal studies that—

(i) examine educational and transitional services and results for children with disabilities who are 3 through 17 years of age and are receiving special education and

related services under this Act, using a national, representative sample of distinct age cohorts and disability categories; and

(ii) examine educational results, postsecondary placement, and employment status of individuals with disabilities, 18 through 21 years of age, who are receiving or have received special education and related services under this Act; and

(E) identify and report on the placement of children with disabilities by disability category.

(b) NATIONAL ASSESSMENT.—

(1) IN GENERAL.—The Secretary shall carry out a national assessment of activities carried out with Federal funds under this Act in order—

(A) to determine the effectiveness of this Act in achieving its purposes;

(B) to provide information to the President, the Congress, the States, local educational agencies, and the public on how to implement the Act more effectively; and

(C) to provide the President and the Congress with information that will be useful in developing legislation to achieve the purposes of this Act more effectively.

(2) CONSULTATION.—The Secretary shall plan, review, and conduct the national assessment under this subsection in consultation with researchers, State practitioners, local practitioners, parents of children with disabilities, individuals with disabilities, and other appropriate individuals.

(3) SCOPE OF ASSESSMENT.—The national assessment shall examine how well schools, local educational agencies, States, other recipients of assistance under this Act, and the Secretary are achieving the purposes of this Act, including—

(A) improving the performance of children with disabilities in general scholastic activities and assessments as compared to nondisabled children;

(B) providing for the participation of children with disabilities in the general curriculum;

(C) helping children with disabilities make successful transitions from—

(i) early intervention services to preschool education;

(ii) preschool education to elementary school; and

(iii) secondary school to adult life;

(D) placing and serving children with disabilities, including minority children, in the least restrictive environment appropriate;

(E) preventing children with disabilities, especially children with emotional disturbances and specific learning disabilities, from dropping out of school;

(F) addressing behavioral problems of children with disabilities as compared to nondisabled children;

(G) coordinating services provided under this Act with each other, with other educational and pupil services (including preschool services), and with health and social services funded from other sources;

(H) providing for the participation of parents of children with disabilities in the education of their children; and

(I) resolving disagreements between education personnel and parents through activities such as mediation.

(4) INTERIM AND FINAL REPORTS.—The Secretary shall submit to the President and the Congress—

(A) an interim report that summarizes the preliminary findings of the assessment not later than October 1, 1999; and

(B) a final report of the findings of the assessment not later than October 1, 2001.

(c) ANNUAL REPORT.—The Secretary shall report annually to the Congress on—

(1) an analysis and summary of the data reported by the States and the Secretary of the Interior under section 618;

(2) the results of activities conducted under subsection (a);

(3) the findings and determinations resulting from reviews of State implementation of this Act.

(d) TECHNICAL ASSISTANCE TO LEAS.—The Secretary shall provide directly, or through grants, contracts, or cooperative agreements, technical assistance to local educational agencies to assist them in carrying out local capacity-building and improvement projects under section 611(f)(4) and other LEA systemic improvement activities under this Act.

(e) RESERVATION FOR STUDIES AND TECHNICAL ASSISTANCE.—

(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision of this Act, the Secretary may reserve up to one-half of one percent of the amount appropriated under parts B and C for each fiscal year to carry out this section.

(2) MAXIMUM AMOUNT.—For the first fiscal year in which the amount described in paragraph (1) is at least $20,000,000, the maximum amount the Secretary may reserve under paragraph (1) is $20,000,000. For each subsequent fiscal year, the maximum amount the Secretary may reserve under paragraph (1) is $20,000,000, increased by the cumulative rate of inflation since the fiscal year described in the previous sentence.

(3) USE OF MAXIMUM AMOUNT.—In any fiscal year described in paragraph (2) for which the Secretary reserves the maximum amount described in that paragraph, the Secretary shall use at least half of the reserved amount for activities under subsection (d).

Chapter 2—Improving Early Intervention, Educational, and Transitional Services and Results for Children With Disabilities Through Coordinated Technical Assistance, Support, and Dissemination of Information

SEC. 681. FINDINGS AND PURPOSES.

(a) IN GENERAL.—The Congress finds as follows:

(1) National technical assistance, support, and dissemination activities are necessary to ensure that parts B and C are fully

implemented and achieve quality early intervention, educational, and transitional results for children with disabilities and their families.

(2) Parents, teachers, administrators, and related services personnel need technical assistance and information in a timely, coordinated, and accessible manner in order to improve early intervention, educational, and transitional services and results at the State and local levels for children with disabilities and their families.

(3) Parent training and information activities have taken on increased importance in efforts to assist parents of a child with a disability in dealing with the multiple pressures of rearing such a child and are of particular importance in—

(A) ensuring the involvement of such parents in planning and decisionmaking with respect to early intervention, educational, and transitional services;

(B) achieving quality early intervention, educational, and transitional results for children with disabilities;

(C) providing such parents information on their rights and protections under this Act to ensure improved early intervention, educational, and transitional results for children with disabilities;

(D) assisting such parents in the development of skills to participate effectively in the education and development of their children and in the transitions described in section 674(b)(3)(C); and

(E) supporting the roles of such parents as participants within partnerships seeking to improve early intervention, educational, and transitional services and results for children with disabilities and their families.

(4) Providers of parent training and information activities need to ensure that such parents who have limited access to services and supports, due to economic, cultural, or linguistic barriers, are provided with access to appropriate parent training and information activities.

(5) Parents of children with disabilities need information that helps the parents to understand the rights and responsibilities of their children under part B.

(6) The provision of coordinated technical assistance and dissemination of information to State and local agencies, institutions of higher education, and other providers of services to children with disabilities is essential in—

(A) supporting the process of achieving systemic change;

(B) supporting actions in areas of priority specific to the improvement of early intervention, educational, and transitional results for children with disabilities;

(C) conveying information and assistance that are—

(i) based on current research (as of the date the information and assistance are conveyed);

(ii) accessible and meaningful for use in supporting systemic-change activities of State and local partnerships; and *(iii) linked directly to improving early intervention, educational, and transitional services and results for children with disabilities and their families; and*

(D) organizing systems and information networks for such information, based on modern technology related to—

(i) storing and gaining access to information; and

(ii) distributing information in a systematic manner to parents, students, professionals, and policymakers.

(7) Federal support for carrying out technology research, technology development, and educational media services and activities has resulted in major innovations that have significantly improved early intervention, educational, and transitional services and results for children with disabilities and their families.

(8) Such Federal support is needed—

(A) to stimulate the development of software, interactive learning tools, and devices to address early intervention, educational, and transitional needs of children with disabilities who have certain disabilities;

(B) to make information available on technology research, technology development, and educational media services and activities to individuals involved in the provision of early intervention, educational, and transitional services to children with disabilities;

(C) to promote the integration of technology into curricula to improve early intervention, educational, and transitional results for children with disabilities;

(D) to provide incentives for the development of technology and media devices and tools that are not readily found or available because of the small size of potential markets;

(E) to make resources available to pay for such devices and tools and educational media services and activities;

(F) to promote the training of personnel—

(i) to provide such devices, tools, services, and activities in a competent manner; and

(ii) to assist children with disabilities and their families in using such devices, tools, services, and activities; and

(G) to coordinate the provision of such devices, tools, services, and activities—

(i) among State human services programs; and

(ii) between such programs and private agencies.

(b) PURPOSES.—The purposes of this chapter are to ensure that—

(1) children with disabilities, and their parents, receive training and information on their rights and protections under this Act, in order to develop the skills necessary to effectively participate in planning and decisionmaking relating to early intervention, educational, and transitional services and in systemic-change activities;

(2) parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist such persons, through systemic-change activities and other efforts, to improve early intervention, edu-

cational, and transitional services and results for children with disabilities and their families;

(3) appropriate technology and media are researched, developed, demonstrated, and made available in timely and accessible formats to parents, teachers, and all types of personnel providing services to children with disabilities to support their roles as partners in the improvement and implementation of early intervention, educational, and transitional services and results for children with disabilities and their families;

(4) on reaching the age of majority under State law, children with disabilities understand their rights and responsibilities under part B, if the State provides for the transfer of parental rights under section 615(m); and

(5) the general welfare of deaf and hard-of-hearing individuals is promoted by—

(A) bringing to such individuals understanding and appreciation of the films and television programs that play an important part in the general and cultural advancement of hearing individuals;

(B) providing, through those films and television programs, enriched educational and cultural experiences through which deaf and hard-of-hearing individuals can better understand the realities of their environment; and

(C) providing wholesome and rewarding experiences that deaf and hard-of-hearing individuals may share.

SEC. 682. PARENT TRAINING AND INFORMATION CENTERS.

(a) PROGRAM AUTHORIZED.—The Secretary may make grants to, and enter into contracts and cooperative agreements with, parent organizations to support parent training and information centers to carry out activities under this section.

(b) REQUIRED ACTIVITIES.—Each parent training and information center that receives assistance under this section shall—

(1) provide training and information that meets the training and information needs of parents of children with disabilities living in the area served by the center, particularly underserved parents and parents of children who may be inappropriately identified;

(2) assist parents to understand the availability of, and how to effectively use, procedural safeguards under this Act, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e);

(3) serve the parents of infants, toddlers, and children with the full range of disabilities;

(4) assist parents to—

(A) better understand the nature of their children's disabilities and their educational and developmental needs;

(B) communicate effectively with personnel responsible for providing special education, early intervention, and related services;

(C) participate in decisionmaking processes and the development of individualized education programs under part B and individualized family service plans under part C;

(D) obtain appropriate information about the range of options, programs, services, and resources available to assist children with disabilities and their families;

(E) understand the provisions of this Act for the education of, and the provision of early intervention services to, children with disabilities; and

(F) participate in school reform activities;

(5) in States where the State elects to contract with the parent training and information center, contract with State educational agencies to provide, consistent with subparagraphs (B) and (D) of section 615(e)(2), individuals who meet with parents to explain the mediation process to them;

(6) network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 685(d), and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities; and

(7) annually report to the Secretary on—

(A) the number of parents to whom it provided information and training in the most recently concluded fiscal year; and

(B) the effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities.

(c) OPTIONAL ACTIVITIES.—A parent training and information center that receives assistance under this section may—

(1) provide information to teachers and other professionals who provide special education and related services to children with disabilities;

(2) assist students with disabilities to understand their rights and responsibilities under section 615(m) on reaching the age of majority; and

(3) assist parents of children with disabilities to be informed participants in the development and implementation of the State's State improvement plan under subpart 1.

(d) APPLICATION REQUIREMENTS.—Each application for assistance under this section shall identify with specificity the special efforts that the applicant will undertake—

(1) to ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and

(2) to work with community-based organizations.

(e) DISTRIBUTION OF FUNDS.—

(1) IN GENERAL.—The Secretary shall make at least 1 award to a parent organization in each State, unless the Secretary does not receive an application from such an organization in each State of sufficient quality to warrant approval.

(2) SELECTION REQUIREMENT.—The Secretary shall select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to parents, including parents in urban and rural areas, in the State.

(f) QUARTERLY REVIEW.—

(1) REQUIREMENTS.—

(A) MEETINGS.—The board of directors or special governing committee of each organization that receives an award under this section shall meet at least once in each calendar quarter to review the activities for which the award was made.

(B) ADVISING BOARD.—Each special governing committee shall directly advise the organization's governing board of its views and recommendations.

(2) CONTINUATION AWARD.—When an organization requests a continuation award under this section, the board of directors or special governing committee shall submit to the Secretary a written review of the parent training and information program conducted by the organization during the preceding fiscal year.

(g) DEFINITION OF PARENT ORGANIZATION.—As used in this section, the term "parent organization" means a private nonprofit organization (other than an institution of higher education) that—

(1) has a board of directors—

(A) the majority of whom are parents of children with disabilities;

(B) that includes—

(i) individuals working in the fields of special education, related services, and early intervention; and

(ii) individuals with disabilities; and

(C) the parent and professional members of which are broadly representative of the population to be served; or

(2) has—

(A) a membership that represents the interests of individuals with disabilities and has established a special governing committee that meets the requirements of paragraph (1); and

(B) a memorandum of understanding between the special governing committee and the board of directors of the organization that clearly outlines the relationship between the board and the committee and the decisionmaking responsibilities and authority of each.

SEC. 683. COMMUNITY PARENT RESOURCE CENTERS.

(a) IN GENERAL.—The Secretary may make grants to, and enter into contracts and cooperative agreements with, local parent organizations to support parent training and information centers that will help ensure that underserved parents of children with disabilities, including low-income parents, parents of children with limited English proficiency, and parents with disabilities, have the training and information they need to enable them to participate effectively in helping their children with disabilities—

(1) to meet developmental goals and, to the maximum extent possible, those challenging standards that have been established for all children; and

(2) to be prepared to lead productive independent adult lives, to the maximum extent possible.

(b) REQUIRED ACTIVITIES.—Each parent training and information center assisted under this section shall—

(1) provide training and information that meets the training and information needs of parents of children with disabilities

proposed to be served by the grant, contract, or cooperative agreement;

(2) carry out the activities required of parent training and information centers under paragraphs (2) through (7) of section 682(b);

(3) establish cooperative partnerships with the parent training and information centers funded under section 682; and

(4) be designed to meet the specific needs of families who experience significant isolation from available sources of information and support.

(c) Definition.—As used is this section, the term "local parent organization" means a parent organization, as defined in section 682(g), that either—

(1) has a board of directors the majority of whom are from the community to be served; or

(2) has—

(A) as a part of its mission, serving the interests of individuals with disabilities from such community; and

(B) a special governing committee to administer the grant, contract, or cooperative agreement, a majority of the members of which are individuals from such community.

SEC. 684. TECHNICAL ASSISTANCE FOR PARENT TRAINING AND INFORMATION CENTERS.

(a) In General.—The Secretary may, directly or through awards to eligible entities, provide technical assistance for developing, assisting, and coordinating parent training and information programs carried out by parent training and information centers receiving assistance under sections 682 and 683.

(b) Authorized Activities.—The Secretary may provide technical assistance to a parent training and information center under this section in areas such as—

(1) effective coordination of parent training efforts;

(2) dissemination of information;

(3) evaluation by the center of itself;

(4) promotion of the use of technology, including assistive technology devices and assistive technology services;

(5) reaching underserved populations;

(6) including children with disabilities in general education programs;

(7) facilitation of transitions from—

(A) early intervention services to preschool;

(B) preschool to school; and

(C) secondary school to postsecondary environments; and

(8) promotion of alternative methods of dispute resolution.

SEC. 685. COORDINATED TECHNICAL ASSISTANCE AND DISSEMINATION.

(a) In General.—The Secretary shall, by competitively making grants or entering into contracts and cooperative agreements with eligible entities, provide technical assistance and information, through such mechanisms as institutes, Regional Resource Centers, clearinghouses, and programs that support States and local entities in building capacity, to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and address systemic-change goals and priorities.

(b) SYSTEMIC TECHNICAL ASSISTANCE; AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—In carrying out this section, the Secretary shall carry out or support technical assistance activities, consistent with the objectives described in subsection (a), relating to systemic change.

(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

(A) Assisting States, local educational agencies, and other participants in partnerships established under subpart 1 with the process of planning systemic changes that will promote improved early intervention, educational, and transitional results for children with disabilities.

(B) Promoting change through a multistate or regional framework that benefits States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic-change outcomes.

(C) Increasing the depth and utility of information in ongoing and emerging areas of priority need identified by States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic-change outcomes.

(D) Promoting communication and information exchange among States, local educational agencies, and other participants in partnerships, based on the needs and concerns identified by the participants in the partnerships, rather than on externally imposed criteria or topics, regarding—

(i) the practices, procedures, and policies of the States, local educational agencies, and other participants in partnerships; and

(ii) accountability of the States, local educational agencies, and other participants in partnerships for improved early intervention, educational, and transitional results for children with disabilities.

(c) SPECIALIZED TECHNICAL ASSISTANCE; AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—In carrying out this section, the Secretary shall carry out or support activities, consistent with the objectives described in subsection (a), relating to areas of priority or specific populations.

(2) AUTHORIZED ACTIVITIES.—Examples of activities that may be carried out under this subsection include activities that—

(A) focus on specific areas of high-priority need that—

(i) are identified by States, local educational agencies, and other participants in partnerships;

(ii) require the development of new knowledge, or the analysis and synthesis of substantial bodies of information not readily available to the States, agencies, and other participants in partnerships; and

(iii) will contribute significantly to the improvement of early intervention, educational, and transitional services and results for children with disabilities and their families;

(B) focus on needs and issues that are specific to a population of children with disabilities, such as the provision of single-State and multi-State technical assistance and inservice training—

(i) to schools and agencies serving deaf-blind children and their families; and

(ii) to programs and agencies serving other groups of children with low-incidence disabilities and their families; or

(C) address the postsecondary education needs of individuals who are deaf or hard of hearing.

(d) NATIONAL INFORMATION DISSEMINATION; AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—In carrying out this section, the Secretary shall carry out or support information dissemination activities that are consistent with the objectives described in subsection (a), including activities that address national needs for the preparation and dissemination of information relating to eliminating barriers to systemic-change and improving early intervention, educational, and transitional results for children with disabilities.

(2) AUTHORIZED ACTIVITIES.—Examples of activities that may be carried out under this subsection include activities relating to—

(A) infants and toddlers with disabilities and their families, and children with disabilities and their families;

(B) services for populations of children with low-incidence disabilities, including deaf-blind children, and targeted age groupings;

(C) the provision of postsecondary services to individuals with disabilities;

(D) the need for and use of personnel to provide services to children with disabilities, and personnel recruitment, retention, and preparation;

(E) issues that are of critical interest to State educational agencies and local educational agencies, other agency personnel, parents of children with disabilities, and individuals with disabilities;

(F) educational reform and systemic change within States; and

(G) promoting schools that are safe and conducive to learning.

(3) LINKING STATES TO INFORMATION SOURCES.—In carrying out this subsection, the Secretary may support projects that link States to technical assistance resources, including special education and general education resources, and may make research and related products available through libraries, electronic networks, parent training projects, and other information sources.

(e) APPLICATIONS.—An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

SEC. 686. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out sections 681 through 685 such sums as may be necessary for each of the fiscal years 1998 through 2002.

SEC. 687. TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND UTILIZATION, AND MEDIA SERVICES.

(a) In General.—The Secretary shall competitively make grants to, and enter into contracts and cooperative agreements with, eligible entities to support activities described in subsections (b) and (c).

(b) Technology Development, Demonstration, and Utilization; Authorized Activities.—

(1) In general.—In carrying out this section, the Secretary shall support activities to promote the development, demonstration, and utilization of technology.

(2) Authorized activities.—Activities that may be carried out under this subsection include activities such as the following:

(A) Conducting research and development activities on the use of innovative and emerging technologies for children with disabilities.

(B) Promoting the demonstration and use of innovative and emerging technologies for children with disabilities by improving and expanding the transfer of technology from research and development to practice.

(C) Providing technical assistance to recipients of other assistance under this section, concerning the development of accessible, effective, and usable products.

(D) Communicating information on available technology and the uses of such technology to assist children with disabilities.

(E) Supporting the implementation of research programs on captioning or video description.

(F) Supporting research, development, and dissemination of technology with universal-design features, so that the technology is accessible to individuals with disabilities without further modification or adaptation.

(G) Demonstrating the use of publicly-funded telecommunications systems to provide parents and teachers with information and training concerning early diagnosis of, intervention for, and effective teaching strategies for, young children with reading disabilities.

(c) Educational Media Services; Authorized Activities.—In carrying out this section, the Secretary shall support—

(1) educational media activities that are designed to be of educational value to children with disabilities;

(2) providing video description, open captioning, or closed captioning of television programs, videos, or educational materials through September 30, 2001; and after fiscal year 2001, providing video description, open captioning, or closed captioning of educational news, and informational television, videos, or materials;

(3) distributing captioned and described videos or educational materials through such mechanisms as a loan service;

(4) providing free educational materials, including textbooks, in accessible media for visually impaired and print-disabled students in elementary, secondary, postsecondary, and graduate schools;

(5) providing cultural experiences through appropriate nonprofit organizations, such as the National Theater of the Deaf, that—

(A) enrich the lives of deaf and hard-of-hearing children and adults;

(B) increase public awareness and understanding of deafness and of the artistic and intellectual achievements of deaf and hard-of-hearing persons; or

(C) promote the integration of hearing, deaf, and hard-of-hearing persons through shared cultural, educational, and social experiences; and

(6) compiling and analyzing appropriate data relating to the activities described in paragraphs (1) through (5).

(d) APPLICATIONS.—*Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.*

(e) AUTHORIZATION OF APPROPRIATIONS.—*There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1998 through 2002.*

ADDITIONAL VIEWS

The Individuals with Disabilities Education Act (IDEA) provides millions of children with disabilities with the right to a free appropriate public education (FAPE). During consideration of the IDEA in the 104th Congress, emphasis was shifted away from improving the educational opportunities for these needy children. Instead, Majority Members of the Committee on Economic and Educational Opportunities sought to create a discipline model that would actually deny certain children their civil right to an education. This attempt was correctly attacked by nearly every education group in the country. Their opposition to this provision stopped the reauthorization of the IDEA in its tracks.

On January 7, 1997, the Committee on Education and the Workforce, introduced a "warmed over" IDEA reauthorization bill (H.R. 5) containing the same ill conceived provision. Seeking to avoid attacks from the education community, and to ensure that this important legislation survives the reauthorization process, a few Members of the House and Senate agreed to create a bipartisan, bicameral working group which would draft a consensus IDEA bill. The result is a bill that is significantly better than the ill-fated legislation created in the 104th Congress and reintroduced in the 105th. However, this unique process served to usurp the authority of the Subcommittee on Early Childhood, Youth and Families and discouraged participation by many of its Members. Additionally, there continue to be outstanding important educational issues that were not considered by the "working group."

COMMUNITY PARENT RESOURCE CENTERS

We strongly support the expansion of the highly successful Community Parent Resource Centers program. Parents in our nation's poorest urban and rural communities continue to be severely hampered in their quest for access to training and information. As a result, they are underrepresented among those who access the established systems of obtaining information and support needed to guide their children in the process of obtaining a free appropriate education.

The 1990 amendment to IDEA established a remedy in the form of "experimental centers," now called Community Parent Resource Centers. These Centers are grassroots, community-based programs serving chronically underrepresented parents of children with disabilities residing in urban and rural areas. There are currently twenty-six parent Centers around the country. However, only five of these Centers are funded through the IDEA. Many are struggling to survive, jeopardizing the chances parents in those traditionally underserved areas have of participating in their children's education. These Centers provide a variety of services which enable parents to work with their children's schools to ensure that their children receive a free appropriate public education.

During Full Committee consideration of H.R. 5, an amendment was offered that would have doubled the number of centers receiving funding through IDEA to ensure that more parents can participate fully in their children's education and avoid costly litigation that results from a misunderstanding of the IDEA.

TRANSITION OF DECLASSIFIED STUDENTS

We support the extension of FAPE to students who are removed from special education. A report by the National Council on Disability confirmed that "children from minority groups are identified as mildly disabled in numbers disproportionate to their representation in the general population." Although only 21.4% of the total school population is African American, African Americans represent 41.6% of special education students. The report goes on to state that these students' classroom behavior may contribute to their over identification and that their behavior may be linked to learning difficulties. If these children were returned to regular education classes without support services, the behavior and learning problems would still need to be addressed.

An amendment was offered during Full Committee consideration of H.R. 5 that would help children who have been mistakenly placed in special education and then declassified and shipped back into regular education. My amendment would create a mechanism to ensure a smooth transition from special education into regular education by providing these children with services which insure a greater opportunity for academic success in regular education classes. By providing these children with IDEA services for one year after they are declassified, we will decrease the chances that they will be returned to special education. Keeping these wrongly classified children in regular education where they belong would ultimately result in lower costs for school districts.

MAKING THE IDEA WORK FOR ALL CHILDREN

When considering education legislation, it is vital that we fight the impulse to choose expediency over reasonable debate. The IDEA impacts on children and families in all parts of the country, rural, urban and suburban. The process we use to reauthorize critically important legislation must therefore remain open to the public, as well as all Members of the Committee on Education and the Workforce. In the current spirit of bipartisanship we must work harder to create legislation that puts the needs of children and families ahead of political expediency.

MAJOR R. OWENS.

DISSENTING VIEWS

INTRODUCTION

Congress today continues our unconstitutional interference with the education of the disabled by moving forward with HR 5, the Individuals With Disabilities Education Act of 1997 (IDEA). Parents of disabled children should have the exact same rights to make education decisions for their children as the parents of all children. A huge federal bureaucracy is not the best way to insure that. In fact, logic dictates that it is this very federal bureaucracy which most negatively impacts the goals of parents to get the best education for their children. Parents and local communities know so much better than do the bureaucrats in Washington the special needs of children. This is why we need decentralization. Parents and local educators will always know better what is best for their children. Obviously, no Washington bureaucrat can know or love a child the way their parents do.

In fact, we in Congress are at least as culpable as the bureaucrats because we pass many of the laws which the bureaucrats enforce. The notion is no way that the unique needs of my grandchildren, and some young boy or girl in Los Angeles, California or New York City can all be put into some nationalized "cookie cutter" approach.

Furthermore, the federal Department of Education is a huge bureaucracy which hires hordes of bureaucrats and political employees with some 30 billion dollars which the good people of the United States are forced to send to Washington each and every year after year. Only a percentage of this money goes back to actually educating children.

But money is not the exclusive, nor even the primary problem with this bill. Rather, it is the faulty educational philosophy which needs to be addressed.

BILL ANALYSIS

There are four significant problems with the IDEA bill. First, education professionals have testified that it promotes a faulty educational ideology of inappropriate "main streaming." Next, state officials have expressed concerns that the bill limits their rightful authority. Third, the bill would expand the power of federal education bureaucrats. Finally, this legislation paves the way for huge increases in federal outlays which have, to date, only proven detrimental to students. The following facts are given as supporting documentation to the issues just raised:

(1) Disabled educational professionals oppose the bill.—Albert Shanker, founder of the American Federation of Teachers was a strong opponent of what has for many years been known as "main streaming." Moreover, on May 10, 1994 the commit-

tee heard testimony from Dr. Mary Wagner which pointed to the failure of this approach. In fact, Dr. Wagner stated that the approach amounted to "sacrificing children to ideology."

While Dr. Wagner's is the most damaging observation which any education advocate has made about the provisions of this bill, it is not the only one. Although it has been reported that disabled advocates support the legislation, an informal survey conducted by my office, shows mixed results and only tepid support among groups which say they favor the bill. Other groups including the Down's Syndrome Congress and the National Association of Private Schools for Exceptional Children have expressed opposition.

We have also received unsolicited phone calls and mail from parents of disabled children and associations representing the same. Many of these contacts have been to express opposition to IDEA. A May 1 letter from Carol Madison of the Illinois Center for Autism states, "The Federal Government should not indicate what method each state should use to fund their special education programs." That letter concludes, "Please do not let this happen to our children."

(2) State officials express concern about the erosion of their authority.—Congress Daily has reported that "representatives of the National Governors Association and state special education directors said * * * they are concerned about some of the bill's provisions limiting state expenditures." Later in that story it is reported that "states MUST maintain their current level of funding" (emphasis added). It also notes significant concerns expressed by Myrna Mandlawitz of the National Association of State Directors of Special Education.

(3) More power to the federal bureaucracy.—Again, Congress Daily reports that the IDEA bill "gives the U.S. education secretary more authority to revoke funding to states that do not reach the standards and goals of the reformed IDEA." And, that it sets "more prescriptive national standards." Perhaps this is the reason that the strongest advocate of nationalized education, the National Education Association, is on record in support of this bill.

(4) Spending increases.—To hold out a "carrot" as well as the "stick" of more strict federal standards, this bill provides a huge increase of funding, from three billion spent on the program this year to four billion next year, a 33% increase. Over an eight-year period this program portends to increase funding by eight billion dollars per year.

Examining the dismal record of federal education programs, we should cringe at the notion of this heightened federal role in disabilities education. As the federal government has spent more and more money on education, we have seen a continual decline in the results of students who take standardized tests such as the Scholastic Aptitude Test (SAT). This bill takes the same prescription for failure applied to other programs and imposes it upon disabled children. Is it because of callousness to their plight, ignorance of the facts, or fear of the special interests; that we are now willing to "sacrifice (these) children to ideology?"

SUMMARY AND CONCLUSION

First, this bill is opposed by a number of scholars, educational professionals and parents who work for disabilities education because its forced "main stream" would "sacrifice children to ideology." These same people have pointed out that "The Federal Government should not dictate what method each state should use to fund their special education programs." We should heed these concerns.

Next, this bill has raised concerns amongst the National Governors' Association and state special education directors because the bill would; "limit (types) of state expenditures" and force "states (to) maintain their current level of funding for special education programs." We must listen to the input of state executives and education leaders rather than imposing mandates upon them.

Further, those of us who are concerned about federal intrusion into the powers of state and local governments, are unhappy that the legislation gives "the U.S. education secretary more authority to revoke funding to states that do not reach the standards and goals of the reformed IDEA."

Finally, this bill increases federal spending by eight billion dollars per year over the next eight years. This is a 266% increase (33% per annum average). For those interested in placing proper limits on the federal education bureaucracy, this bill will have exactly the opposite effect.

When I was first elected to Congress in 1976, this Department did not even exist. Now, my goal is to eliminate this department, release the bureaucrats and political appointees and thus guarantee that all these taxpayer dollars will never have to be sent to Washington. This will allow parents and communities to address the needs of the children in our states and our local communities. This is my vision of restoration to parents of the tools needed to raise and educate their children.

My opposition to IDEA is not routed in disdain for its goals, or any reluctance to support parental efforts to educate their children. In fact, we should stop this failed experiment of federalizing our education system thus ensuring that more resources will be available to help disabled children, thus making results far superior to our current situation.

Each child is a unique person. We must consider if it may be correct to assert that they will receive a better education without Washington's interference. Disabled children have special needs and our local communities are best equipped to accomplish these goals. If Congress gets Washington off their backs and out of the pocket books of parents, all our children will be better off.

RON PAUL.

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